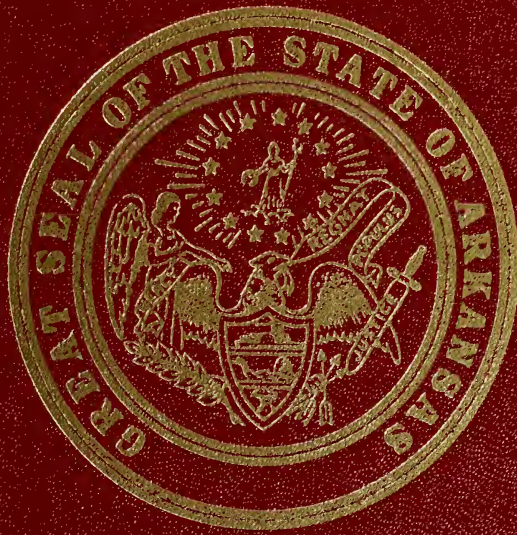


**ARKANSAS CODE
OF 1987
ANNOTATED**

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VOLUME 13A

2009 Replacement

TITLE 15: NATURAL RESOURCES AND ECONOMIC DEVELOPMENT (CHAPTERS 1-39)

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
ARKANSAS CODE REVISION COMMISSION

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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2009 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2009 Ark. LEXIS 489 (October 5, 2009) and 2009 Ark. App. LEXIS 614 (July 1, 2009).

Federal Supplement through September 1, 2009.

Federal Reporter 3d Series through September 1, 2009.

United States Supreme Court Reports, through September 1, 2009.

Bankruptcy Reporter through September 1, 2009.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

ALR 6th through Volume 17, p. 757.

ALR Fed. 2d through Volume 21, p. 361.

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User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.

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NATURAL RESOURCES AND ECONOMIC DEVELOPMENT

(CHAPTERS 40-76 IN VOLUME 13B)

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- 75. LIQUEFIED PETROLEUM GASES.
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A.C.R.C. Notes. Acts 2007, No. 696 provides: "SECTION 1. Commission established — Membership.

"(a) The Governor's Commission on Global Warming is hereby created and established, referred to hereafter as the 'commission'.

"(b) The commission shall be composed of twenty-one (21) members appointed as follows:

"(1) Two (2) members appointed by the President Pro Tempore of the Senate;

"(2) Two (2) members appointed by the Speaker of the House of Representatives; and

"(3) Seventeen (17) members appointed by the Governor as follows:

"(A) One (1) member from the public energy sector;

"(B) One (1) member from a rural electric cooperative;

"(C) One (1) member from the municipal energy sector;

"(D) Two (2) members from the agriculture sector;

"(E) One (1) member from the forestry sector;

"(F) Two (2) members from separate nonprofit environmental organizations;

"(G)(i) Three (3) members who are scientists from an accredited state institution of higher education;

"(ii) One (1) of the three (3) scientists shall be a climatologist;

"(H) One (1) member from the state Chamber of Commerce/Associated Industries of Arkansas;

"(I) One (1) member of the AFL-CIO;

"(J) One (1) member who is an economist from an accredited state institution of higher education;

"(K) One (1) member from the construction industry with experience in sustainable energy construction or design; and

"(L) Two (2) members who are citizens at large.

"(c) The commission shall establish and appoint an advisory body composed of the directors of the following state agencies or his or her designee:

"(1) Arkansas Agriculture Department;

"(2) Arkansas Department of Environmental Quality;

"(3) Arkansas Forestry Commission;

"(4) Arkansas Highway and Transportation Department;

"(5) Arkansas Natural Resources Commission;

“(6) Arkansas Public Service Commission;

“(7) Arkansas State Game and Fish Commission;

“(8) Department of Economic Development;

“(9) Department of Parks and Tourism; and

“(10) Oil and Gas Commission.”

“SECTION 2. Co-chairs.

“The commission shall have two (2) co-chairs to be elected from among the members of the commission.”

“SECTION 3. Quorum.

“A quorum of the commission shall consist of a majority of the members.”

“SECTION 4. Vacancies.

“A vacancy on the commission shall be filled as soon as possible by the appointing authority.”

“SECTION 5. Purpose and duties.

“(a) The commission shall conduct an in-depth examination and evaluation of the issues related to global warming and the potential impacts of global warming on the state, its citizens, its natural resources, and its economy, including without limitation, agriculture, travel and tourism, recreation, insurance, and economic growth and development.

“(b) Based on the commission’s evaluation of the current global warming data, the assessment of global warming mitigation strategies, and the available global warming pollutant reduction strategies, the commission shall set forth:

“(1) A global warming pollutant reduction goal; and

“(2) A comprehensive strategic plan for implementation of the global warming pollutant reduction goal.

“(c) The commission shall present its global warming pollutant reduction goal and comprehensive strategic plan for consideration to the Eighty-Seventh General Assembly and develop findings and recommendations as may be directed thereafter by the Eighty-Seventh General Assembly.

“(d) The purpose of the global warming pollutant reduction goal and comprehensive strategic plan is to place Arkansas in a position to help stabilize the global climate, to allow Arkansas to lead the nation in attracting clean and renewable energy industries to our state, and to reduce consumer energy dependence on current

carbon-generating technologies and expenditures.

“(e) In fulfilling its purpose under this act, the commission shall:

“(1) Review current scientific literature on the causes of global warming;

“(2) Review actions taken by the federal government and by other states to address global warming;

“(3) Evaluate the available data regarding emissions of greenhouse gases from within the state and evaluate the extent to which reductions in the emissions of greenhouse gases in the state may affect global warming;

“(4) Evaluate the economic opportunities for the state from the emerging carbon market that may result from international, national, and local efforts to address the effect of global warming;

“(5) Conduct a cost-effectiveness analysis based on the projected expenses of taking immediate action versus delayed action to address the effect of global warming on individuals, households, local and state governments, businesses, educational institutions, medical institutions, agricultural operations, and other sectors identified by the commission; and

“(6) Evaluate the benefit of any action taken at the state level, either by or within this state or by other states, at the national level, or at the international level to address the effect of global warming on individuals, households, local and state governments, businesses, educational institutions, agricultural operations, medical institutions, and other sectors identified by the commission.

“(7) The Governor’s Commission on Global Warming is authorized to accept gifts, grants, and donations for use in carrying out its purpose and duties.”

“SECTION 6. Additional duties.

The commission may work cooperatively with other states and federal governmental agencies to organize a Governor’s forum on global warming, including its causes, impacts, challenges, and opportunities in the region.”

“SECTION 7. Staffing.

“Upon the prior approval of the Legislative Council of the General Assembly, the Director of the Bureau of Legislative Research shall assign professional staff to the commission to aid in its work.”

“SECTION 8. Meetings.

“The Governor shall convene the first meeting of the commission, which shall be

at the State Capitol. Further meetings shall be at the call of the co-chairs."

"SECTION 9. Report.

"The commission shall report its findings and recommendations to the Governor on or before November 1, 2008, in order to report its findings and recommendations to the Eighty-Seventh General Assembly."

"SECTION 10. Life of commission.

"The commission shall be abolished on or before December 31, 2009, at the discretion of the Governor."

"SECTION 11. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that it is imperative that Arkansas study the scientific data, literature, and research on global warming to determine whether global warming is an immediate threat to the citizens in the State of Arkansas; that the potential impact of global warming on the state and its citizens, its natural resources, and the economy necessitates a thorough review by the state and a strategy to deal with the consequences of global warming; that economic opportunities might arise from an emerging carbon market tailored to reduce carbon emissions; that failure to take necessary steps to prevent, stabilize, or mitigate the effects of global warming will cause irreparable harm to the lives and livelihoods of Arkansans; and that this act is immediately necessary to ensure the welfare and well-being of the citizens of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

"(1) The date of its approval by the Governor;

"(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

"(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 1024 provides: "SECTION 1.

"Task Force for the Twenty-First Century Economy.

"(a) There is created the Task Force for the Twenty-First Century Economy.

"(b) The task force shall consist of seventeen (17) members as follows:

"(1) Six (6) members appointed by the Governor;

"(2) Three (3) members appointed by the Speaker of the House of Representatives;

"(3) Three (3) members appointed by the President Pro Tempore of the Senate;

"(4) Two (2) members nominated by Accelerate Arkansas and approved by the Governor; and

"(5) The following persons shall be ex officio members of the task force:

"(A) The Director of the Arkansas Department of Economic Development or his or her designee;

"(B) The President of the Arkansas Development Finance Authority or his or her designee; and

"(C) The President of the Arkansas Science and Technology Authority or his or her designee.

"(c) If a vacancy occurs on the task force, a successor shall be appointed in the same manner as provided in the initial appointment.

"(d)(1) The Governor shall appoint a chair from the membership of the committee.

"(2) The chair may call meetings of the task force as he or she deems necessary.

"(e) The task force may contract with consultants to contribute to the work of the task force within the limit of funds appropriated for that purpose.

"(f) Members of the task force shall be entitled to expense reimbursement at the rates under § 25-16-902.

"(g) Staff support for the task force shall be provided by the Arkansas Department of Economic Development, Arkansas Development and Finance Authority, and the Arkansas Science and Technology Authority.

"(h)(1) The task force shall study economic development issues it believes to be important to the state and develop specific recommendations for review, consideration, and implementation.

"(2) Issues to be studied by the task force include without limitation:

"(A) The role and scope of economic development in Arkansas in the twenty-first century;

"(B) The programs and services needed for the state and its communities to be globally competitive within the role and scope of twenty-first century economic development;

“(C) The advisability of removal of the constitutional prohibition on state equity investments in private enterprise by economic development agencies; and

“(D) The organizational structure necessary for an efficient and effective twenty-first century state economic development system.

“(i)(1) On or before July 31, 2008, the task force shall submit an interim report containing its recommendations to the:

“(A) Governor;

“(B) House Committee on Agriculture, Forestry, and Economic Development;

“(C) Senate Committee on Agriculture, Forestry, and Economic Development;

“(D) Arkansas Department of Economic Development;

“(E) Arkansas Development and Finance Authority; and

“(F) Arkansas Science and Technology Authority.

“(2) The task force shall submit a final version of its report to the persons and entities under subdivision (i)(1) of this section on or before October 31, 2008.

“(j) The task force shall be abolished on April 30, 2009.”

SUBTITLE 1. DEVELOPMENT OF ECONOMIC AND NATURAL RESOURCES GENERALLY

CHAPTER 1

GENERAL PROVISIONS

SECTION.

15-1-101. Economic Advisor.

15-1-102. [Repealed.]

15-1-101. Economic Advisor.

(a) There is established within the Office of the Governor the position of Economic Advisor, to be appointed by and serve at the pleasure of the Governor.

(b) The advisor shall confer and advise with the Governor on all matters pertaining to the economy of this state.

(c) On instruction of the Governor for further economic advancement, the advisor shall:

(1) Advise and confer with all state agencies having responsibilities for planning, publicity, promotion, and development of the industrial and economic advancement of this state so that the programs are coordinated into a maximum effort of promoting the industrial and economic growth of the state;

(2) Evaluate and advise the Governor with respect to all aspects of the state's industrial development program, of the effectiveness of various efforts of the program, and of means of improving it;

(3) Confer and advise with the various private organizations and groups of this state representing agriculture, labor, industry, trade and commerce, finance and banking, and other areas of economic interests to the extent that the Governor might be fully advised of all aspects of economic activity in the state and be kept informed of means whereby the State of Arkansas might aid and assist in promoting greater economic expansion and growth; and

(4) Perform such other duties with respect to the development and coordination of the state's industrial and economic expansion efforts as the Governor may direct.

History. Acts 1965, No. 103, § 1; A.S.A. 1947, § 12-301.

15-1-102. [Repealed.]

Publisher's Notes. This section, concerning a state rural development study commission, was repealed by Acts 2005, No. 1962, § 55. The section was derived from Acts 1989, No. 704, §§ 1, 2.

CHAPTER 2

SOUTHERN GROWTH POLICIES AGREEMENT

SECTION.

15-2-101. Enactment and text.

15-2-101. Enactment and text.

The Southern Growth Policies Agreement is hereby enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows:

SOUTHERN GROWTH POLICIES AGREEMENT

ARTICLE I

Findings and Purposes

(a) The party states find that the South has a sense of community based on common social, cultural, and economic needs and fostered by a regional tradition. There are vast potentialities for mutual improvement of each state in the region by cooperative planning for the development, conservation, and efficient utilization of human and natural resources in a geographic area large enough to afford a high degree of flexibility in identifying and taking maximum advantage of opportunities for healthy and beneficial growth. The independence of each state and the special needs of subregions are recognized and are to be safeguarded. Accordingly, the cooperation resulting from this Agreement is intended to assist the states in meeting their own problems by enhancing their abilities to recognize and analyze regional opportunities and take account of regional influences in planning and implementing their public policies.

(b) The purposes of this agreement are to provide:

1. Improved facilities and procedures for study, analysis, and planning of governmental policies, programs, and activities of regional significance;
2. Assistance in the prevention of interstate conflicts and the promotion of regional cooperation;

3. Mechanisms for the coordination of state and local interests on a regional basis;
4. An agency to assist the states in accomplishing the foregoing.

ARTICLE II

The Board

(a) There is hereby created the Southern Growth Policies Board, hereinafter called "the board."

(b) The board shall consist of five (5) members from each party state, as follows:

1. The Governor;
2. Two (2) members of the state legislature, one (1) appointed by the presiding officer of each house of the legislature or in such other manner as the legislature may provide;
3. Two (2) residents of the state who shall be appointed by the Governor to serve at his pleasure.

(c) In making appointments pursuant to paragraph (b) 3, a Governor shall, to the greatest extent practicable, select persons who, along with the other members serving pursuant to paragraph (b), will make the state's representation on the board broadly representative of the several socio-economic elements within his state.

(d) 1. A Governor may be represented by an alternate with power to act in his place and stead, if notice of the designation of such alternate is given to the board in such manner as its bylaws may provide.

2. A legislative member of the board may be represented by an alternate with power to act in his place and stead, unless the laws of his state prohibit such representation and if notice of the designation of such alternate is given to the board in such manner as its bylaws may provide. An alternate for a legislative member of the board shall be selected by the member from among the members of the legislative house in which he serves.

3. A member of the board serving pursuant to paragraph (b) 3 of this Article may be represented by another resident of his state who may participate in his place and stead, except that he shall not vote; provided that notice of the identity and designation of the representative selected by the member is given to the board in such manner as its bylaws may provide.

ARTICLE III

Powers

(a) The board shall prepare and keep current a Statement of Regional Objectives, including recommended approaches to regional problems. The statement may also identify projects deemed by the board to be of regional significance. The statement shall be available in its initial form two (2) years from the effective date of this agreement and shall be amended or revised no less frequently than once every six (6) years. The

statement shall be in such detail as the board may prescribe. Amendments, revisions, supplements, or evaluations may be transmitted at any time. An annual commentary on the statement shall be submitted at a regular time to be determined by the board.

(b) In addition to powers conferred on the board elsewhere in this agreement, the board shall have the power to make or commission studies, investigations, and recommendations with respect to:

1. The planning and programming of projects of interstate or regional significance;

2. Planning and scheduling of governmental services and programs which would be of assistance to the orderly growth and prosperity of the region and to the well-being of its population;

3. Effective utilization of such federal assistance as may be available on a regional basis or as may have an interstate or regional impact;

4. Measure for influencing population distribution, land use, development of new communities, and redevelopment of existing ones;

5. Transportation patterns and systems of interstate and regional significance;

6. Improved utilization of human and natural resources for the advancement of the region as a whole;

7. Any other matters of a planning, data collection, or informational character that the board may determine to be of value to the party states.

ARTICLE IV

Avoidance of Duplication

(a) To avoid duplication of effort and in the interest of economy, the board shall make use of existing studies, surveys, plans, and data and other materials in the possession of the governmental agencies of the party states and their respective subdivisions or in the possession of other interstate agencies. Each such agency, within available appropriations and if not expressly prevented or limited by law, is hereby authorized to make such materials available to the board and to otherwise assist it in the performance of its functions. At the request of the board, each such agency is further authorized to provide information regarding plans and programs affecting the region, or any subarea thereof, so that the board may have available to it current information with respect thereto.

(b) The board shall use qualified public and private agencies to make investigations and conduct research, but if it is unable to secure the undertaking of such investigations or original research by a qualified public or private agency, it shall have the power to make its own investigations and conduct its own research. The board may make contracts with any public or private agencies or private persons or entities for the undertaking of such investigations or original research within its purview.

(c) In general, the policy of paragraph (b) of this Article shall apply to the activities of the board relating to its Statement of Regional

Objectives, but nothing herein shall be construed to require the board to rely on the services of other persons or agencies in developing the Statement of Regional Objectives or any amendment, supplement, or revision thereof.

ARTICLE V

Advisory Committees

The board shall establish a Local Government Advisory Committee. In addition, the board may establish advisory committees representative of subregions of the South, civic and community interests, industry, agriculture, labor, or other categories or any combinations thereof. Unless the laws of a party state contain a contrary requirement, any public official of the party state or a subdivision thereof may serve on an advisory committee established pursuant hereto and such service may be considered as a duty of his regular office or employment.

ARTICLE VI

Internal Management of the Board

(a) The members of the board shall be entitled to one (1) vote each. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor thereof. Action of the board shall be only at a meeting at which a majority of the members or their alternates are present. The Board shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the board may delegate the exercise of any of its powers relating to internal administration and management to an executive committee or the executive director. In no event shall any such delegation include final approval of:

1. A budget or appropriation request;
2. The Statement of Regional Objectives or any amendment, supplement, or revision thereof;
3. Official comments on or recommendations with respect to projects of interstate or regional significance;
4. The annual report.

(b) To assist in the expeditious conduct of its business when the full board is not meeting, the board shall elect an executive committee of not to exceed seventeen (17) members, including at least one (1) member from each party state. The executive committee, subject to the provisions of this agreement and consistent with the policies of the board, shall be constituted and function as provided in the bylaws of the board. One-half ($\frac{1}{2}$) of the membership of the executive committee shall consist of Governors, and the remainder shall consist of other members of the board, except that at any time when there is an odd number of members on the executive committee, the number of Governors shall be one (1) less than one-half ($\frac{1}{2}$) of the total membership. The members of the executive committee shall serve for terms of two (2) years, except

that members elected to the first executive committee shall be elected as follows: one (1) less than one-half ($\frac{1}{2}$) of the membership for two (2) years and the remainder for one (1) year. The chairman, chairman-elect, vice-chairman and treasurer of the board shall be members of the executive committee and anything in this paragraph to the contrary notwithstanding shall serve during their continuance in these offices. Vacancies in the executive committee shall not affect its authority to act, but the board at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term.

(c) The board shall have a seal.

(d) The board shall elect, from among its members, a chairman, a chairman-elect, a vice-chairman and a treasurer. Elections shall be annual. The chairman-elect shall succeed to the office of chairman for the year following his service as chairman-elect. For purposes of the election and service of officers of the board, the year shall be deemed to commence at the conclusion of the annual meeting of the board and terminate at the conclusion of the next annual meeting of the board. The board shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the board, and together with the treasurer and such other personnel as the board may deem appropriate shall be bonded in such amounts as the board shall determine. The executive director shall be secretary.

(e) The executive director, subject to the policy set forth in this agreement and any applicable directions given by the board, may make contracts on behalf of the board.

(f) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director, subject to the approval of the board, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the functions of the board, and shall fix the duties and compensation of such personnel. The board in its bylaws shall provide for the personnel policies and programs of the board.

(g) The board may borrow, accept, or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two (2) or more of the party jurisdictions or their subdivisions.

(h) The board may accept for any of its purposes and functions under this agreement any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency or from any person, firm, association, foundation, or corporation, and may receive, utilize, and dispose of the same. Any donation or grant accepted by the board pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this Article shall be reported in the annual report of the board. Such report shall include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(j) The board shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The board shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor and legislature of each party state a report covering the activities of the board for the preceding year. The board at any time may make such additional reports and transmit such studies as it may deem desirable.

(l) The board may do any other or additional things appropriate to implement powers conferred upon it by this agreement.

ARTICLE VII

Finance

(a) The board shall advise the Governor or designated officer or officers of each party state of its budget of estimated expenditures for such period as may be required by the laws of that party state. Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

(b) The total amount of appropriation requests under any budget shall be apportioned among the party states. Such apportionment shall be in accordance with the following formula:

1. One-third ($\frac{1}{3}$) in equal shares;
2. One-third ($\frac{1}{3}$) in the proportion that the population of a party state bears to the population of all party states; and
3. One-third ($\frac{1}{3}$) in the proportion that the per capita income in a party state bears to the per capita income in all party states.

In implementing this formula, the board shall employ the most recent authoritative sources of information and shall specify the sources used.

(c) The board shall not pledge the credit of any party state. The board may meet any of its obligations in whole or in part with funds available to it pursuant to Article VI(h) of this agreement, provided that the board takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner.

Except where the board makes use of funds available to it pursuant to Article VI(h), or borrows pursuant to this paragraph, the board shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same. The board may borrow against anticipated revenues for terms not to exceed two (2) years, but in any such event the credit pledged shall be that of the board and not of a party state.

(d) The board shall keep accurate accounts of all receipts and disbursements of the board, which shall be subject to the audit and

accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the board.

(e) The accounts of the board shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the board.

(f) Nothing contained herein shall be construed to prevent board compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the board.

ARTICLE VIII

Cooperation with the Federal Government and Other Governmental Entities

Each party state is hereby authorized to participate in cooperative or joint planning undertakings with the federal government, and any appropriate agency or agencies thereof, or with any interstate agency or agencies. Such participation shall be at the instance of the Governor or in such manner as state law may provide or authorize. The board may facilitate the work of state representatives in any joint interstate or cooperative federal-state undertaking authorized by this Article, and each such state shall keep the board advised of its activities in respect of such undertakings, to the extent that they have interstate or regional significance.

ARTICLE IX

Subregional Activities

The board may undertake studies or investigations centering on the problems of one or more selected subareas within the region; provided that, in its judgment, such studies or investigations will have value as demonstrations for similar or other areas within the region. If a study or investigation that would be of primary benefit to a given state, unit of local government, or intrastate or interstate area is proposed, and if the board finds that it is not justified in undertaking the work for its regional value as a demonstration, the board may undertake the study or investigation as a special project. In any such event, it shall be a condition precedent that satisfactory financing and personnel arrangements be concluded to assure that the party or parties benefited bear all costs which the board determines that it would be inequitable for it to assume. Prior to undertaking any study or investigation pursuant to this Article as a special project, the board shall make reasonable efforts to secure the undertaking of the work by another responsible public or private entity in accordance with the policy set forth in Article IV(b).

ARTICLE X

Comprehensive Land Use Planning

If any two (2) or more contiguous party states desire to prepare a single or consolidated comprehensive land use plan, or a land use plan for any interstate area lying partly within each such state, the governors of the states involved may designate the board as their joint agency for the purpose. The board shall accept such designation and carry out such responsibility, provided that the states involved make arrangements satisfactory to the board to reimburse it or otherwise provide the resources with which the land use plan is to be prepared. Nothing contained in this Article shall be construed to deny the availability for use in the preparation of any such plan of data and information already in the possession of the board or to require payment on account of the use thereof in addition to payments otherwise required to be made pursuant to other provisions of this agreement.

ARTICLE XI

Compacts and Agencies Unaffected

Nothing in this agreement shall be construed to:

1. Affect the powers or jurisdiction of any agency of a party state or any subdivision thereof;
2. Affect the rights or obligations of any governmental units, agencies, or officials, or of any private persons or entities conferred or imposed by any interstate or interstate-federal compacts to which any one or more states participating herein are parties;
3. Impinge on the jurisdiction of any existing interstate-federal mechanism for regional planning or development.

ARTICLE XII

Eligible Parties; Entry into and Withdrawal

(a) This agreement shall have as eligible parties the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the territories of Puerto Rico and the Virgin Islands.

(b) Any eligible state may enter into this agreement, and it shall become binding thereon when it has adopted the same, provided that in order to enter into initial effect, adoption by at least five (5) states shall be required.

(c) Adoption of the agreement may be either by enactment thereof or by adherence thereto by the Governor; provided that in the absence of enactment, adherence by the Governor shall be sufficient to make his state a party only until December 31, 1973. During any period when a state is participating in this agreement through gubernatorial action,

the Governor may provide to the board an equitable share of the financial support of the board from any source available to him. Nothing in this paragraph shall be construed to require a governor to take action contrary to the constitution or laws of his state.

(d) Except for a withdrawal effective on December 31, 1973, in accordance with paragraph (c) of this Article, any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the Governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE XIII

Construction and Severability

This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable, and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

History. Acts 1973, No. 327, § 1; 1979, No. 429, § 1; A.S.A. 1947, § 9-1501.

CHAPTER 3

SCIENCE AND TECHNOLOGY AUTHORITY

SUBCHAPTER.

1. ARKANSAS SCIENCE AND TECHNOLOGY AUTHORITY.
2. ARKANSAS RESEARCH MATCHING FUND.
3. ARKANSAS RESEARCH ALLIANCE ACT.
4. POSTDOCTORAL SCIENCE AND ENGINEERING GRANT PROGRAM FOR ECONOMIC DEVELOPMENT AND KNOWLEDGE-BASED JOB GROWTH.

A.C.R.C. Notes. References to "this chapter" in §§ 15-3-101 — 15-3-123 may not apply to §§ 15-3-130 — 15-3-135 and subchapter 2 which were enacted subsequently.

Due to the enactment of subchapter 2 by Acts 1999, No. 1545, the existing provi-

sions of this chapter have been designated as subchapter 1.

Publisher's Notes. Acts 1985, No. 409, § 19, provided that it was the intention of the act to amend only those parts of Act 859 of 1983 as were specifically mentioned and that the remainder of the 1983 act

would remain in full force and effect.

Preambles. Acts 1983, No. 859 contained a preamble which read: "Whereas, science and technology have made significant contributions to improving the quality of life and the providing of technological advancements in a broad spectrum of human endeavor and activities benefiting people throughout the world that were unknown or unavailable to mankind only a few generations ago; and

"Whereas, it is well-recognized that if the State of Arkansas and its people are to participate in and enjoy the benefits to be gained from continued improvements in science and technology, the government of this State must take immediate and bold steps to establish the necessary organizational structure and authority to enable this State to gain the benefits of advanced science and technology for its people; and

"Whereas, the vast agricultural capacities of this State, its broad variety of natural resources, its climate, and the resourcefulness and energy of its people offer an opportunity for the State of Arkansas to play a role in efforts to gain for this State the benefits of advanced science and technology;

"Now, therefore...."

Effective Dates. Acts 1975 (Extended Sess., 1976), No. 1035, § 3: Jan. 27, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in Extended Session, that the standardization of mileage reimbursement for members of the state's Boards and Commissions will alleviate many discrepancies and inequities in existing laws and will allow such members to receive travel reimbursement commensurate with that paid to state employees. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 409, § 20: Mar. 19, 1985. Emergency clause provided: "It is hereby found and determined that there is an urgent need to promote the establishment of high-technology industries within the State of Arkansas and, further, to support basic and applied research in Arkansas colleges and universities; that the Arkansas Science and Technology Authority as presently constituted lacks some of the

powers necessary to meet those needs; and that the amendment of The Authority's enabling legislation will permit it more effectively to carry out the purposes for which it was established. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect, from and after its passage and approval."

Acts 1987, No. 210, § 4: Mar. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the technological development program of this State that small businesses be rendered all possible assistance in their efforts to fund research and development programs, and that the Arkansas Science and Technology Authority be given specific powers to render such assistance. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 862, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1035 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 271, § 5: Mar. 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas has experienced severe deficiencies in the development and promotion of product and process technologies which have the potential to contribute significantly to the business and economic growth of the State. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 803, § 9: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that the economy of the State of Arkansas is suppressed in many areas creating a lack of business opportunities and promoting unemployment. The provisions of this Act are necessary to help promote economic stability and productivity. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 586, § 8: Mar. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that establishment of qualified medical companies in this State will result in numerous benefits including industrial diversification, broadening of the economic base, the creation of jobs and benefits to the residents of this State through new products and processes; that this Act would provide assistance to qualified medical companies and at the same time create benefits to the State and its residents; that this Act would make state law concerning qualified medical companies' net operating loss carry forward provisions compatible with the Internal Revenue Code of the United States; and that the need for the assistance set forth in this Act is necessary in order to provide for

assistance to qualified medical companies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

SUBCHAPTER 1 — ARKANSAS SCIENCE AND TECHNOLOGY AUTHORITY

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15-3-101. Definitions.

As used in this chapter:

(1) “Applied research” means any activity which seeks to utilize, synthesize, or apply existing knowledge, information, or resources to the resolution of a specified problem, question, or issue;

(2) “Authority” means the Arkansas Science and Technology Authority established by this chapter;

(3) “Basic research” means any original investigation for the advancement of scientific or technological knowledge;

(4) “Board” means the Board of Directors of the Arkansas Science and Technology Authority;

(5) “Construct” means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and if the latter, by negotiation or bidding upon such terms and pursuant to such advertising as the authority shall determine to be in the public interest and necessary, under the circumstances existing at the time, to accomplish the purposes of and authorities set forth in this chapter;

(6) “Endowment fund” means the Arkansas Science and Technology Authority Endowment Fund created by § 15-3-118;

(7) “Enterprise” means a business with its principal place of business in Arkansas and which is or proposes to be engaged in this state in manufacturing, research, and development, or the provision of services involving a significant amount of technology;

(8) “Equip” means to install or place on or in any building or structure equipment of any and every kind, whether or not affixed, including, without limiting the generality of the foregoing, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, laboratories, scientific equipment, furniture, furnishings, and personal property of every kind;

(9) “Facilities” means any real property, personal property, or mixed property of any and every kind that can be used or that will be useful in securing or developing industry, including science and high-technology, including, without limiting the generality of the foregoing, rights-of-way, roads, streets, pipes, pipelines, reservoirs, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, instrumentalities, and other real, personal, or mixed property of every kind;

(10) “Industry” shall include, but not be limited to, manufacturing facilities, warehouses, distribution facilities, repair and maintenance

facilities, agricultural facilities, and corporate management offices for industry;

(11) "Initial capitalization" means financing that is provided for the development, refinement, and commercialization of a product or process and other working capital needs;

(12) "Investment fund" means the fund created by § 15-3-120;

(13) "Lease" means to lease for such rentals, for such period or periods, and upon such terms and conditions as the authority shall determine, including, without limiting the generality of the foregoing, the granting of such renewal or extension options for such rentals, for such period or periods, and upon such terms and conditions as the authority shall determine, and the granting of such purchase options for such prices and upon such terms and conditions as the authority shall determine;

(14) "Qualified security" means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate or subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or application therefor, or in royalty or other payments under such a patent or application or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, guarantee of, or option, warrant, or right to subscribe to or purchase any of the foregoing, provided that in the valuation of "qualified security", no value shall be placed on in-kind services;

(15) "Scientific and technological project" means a project undertaken in Arkansas by an enterprise, which project the board shall have determined promotes the purposes of this chapter and otherwise benefits the state and its citizens;

(16) "Sell" means to sell for such price, in such manner, and upon such terms as the authority shall determine, including, without limiting the generality of the foregoing, private or public sale, and if public, pursuant to such advertisement as the authority shall determine, sell for cash or credit payable in lump sum or installments over such period as the authority shall determine, and if on credit, with or without interest and at such rate or rates as the authority shall determine; and

(17) "State" means the State of Arkansas.

History. Acts 1983, No. 859, § 19;
1985, No. 409, § 17; A.S.A. 1947, § 6-1619.

15-3-102. Construction.

(a) This chapter shall be liberally construed to accomplish the intent and purpose thereof and shall be the sole authority required for the accomplishment of such purposes.

(b) To this end, it shall not be necessary for the Arkansas Science and Technology Authority to comply with general provisions of other laws

dealing with public facilities and equipment, their acquisition, construction, leasing, encumbering, or disposition.

History. Acts 1983, No. 859, § 20; 1985, No. 409, § 18; A.S.A. 1947, § 6-1620.

15-3-103. Establishment of the authority.

There is established for the State of Arkansas the Arkansas Science and Technology Authority, hereinafter referred to as the “authority”, which shall have the powers, functions, and duties, as provided in this chapter, to be the instrumentality of this state to exert leadership in and to give direction to a broad spectrum of programs and services designed to gain for this state and its people the benefits and opportunities to be realized through advanced science and technology.

History. Acts 1983, No. 859, § 1; 1985, No. 409, § 1; A.S.A. 1947, § 6-1601.

15-3-104. Members.

(a) The Arkansas Science and Technology Authority shall be governed by fourteen (14) directors, who together shall serve as the Board of Directors of the Arkansas Science and Technology Authority.

(b) Directors shall be legal residents of the State of Arkansas.

(c) The board shall consist of the Director of the Department of Higher Education or the director’s designee, and thirteen (13) directors who shall be appointed by the Governor, subject to confirmation by the Senate, as follows:

(1) Three (3) directors shall be engineers or scientists recognized for their scientific or technological research efforts;

(2) Two (2) directors shall be appointed as representatives of academic institutions who have an extended extensive involvement in science and technology research;

(3) Five (5) directors shall be representatives of the private sector of the state, who shall be persons with knowledge or experience in the fields of agriculture, forestry, finance, economic development, or science and technology; and

(4) Three (3) directors shall be appointed as representatives of the private sector of the state, who shall be persons with knowledge or experience in the field of manufacturing.

(d) In making appointments, the Governor shall give consideration to geographical representation in order that each major area of the state will be represented on the board.

(e) Directors shall be appointed for terms running four (4) years from January 14 of the year of appointment. Directors shall hold office for the terms of their appointments and until their successors have been appointed and qualified.

(f) In the event of a vacancy in the position of director, the vacancy shall be filled by appointment by the Governor in the same manner as

provided for the initial appointment for the remainder of the unexpired portion of the term of the director.

(g) No director of the authority shall serve more than two (2) terms of office.

(h) A director of the authority may be removed by the Governor for cause, stated in writing, after a hearing or upon joint address of a majority of the membership of both houses of the General Assembly at a regular session, fiscal session, or special session.

(i) Unless otherwise provided by law, a director of the authority may receive expense reimbursement in accordance with § 25-16-901 et seq. Such expenses and mileage shall be paid from funds appropriated for such purpose or otherwise available to the authority.

History. Acts 1975 (Extended Sess., 1976), No. 1035, § 1; 1983, No. 859, § 2; 1985, No. 409, § 2; A.S.A. 1947, §§ 6-616, 6-1602; reen. Acts 1987, No. 862, § 1; Acts 1995, No. 65, § 1; 1997, No. 250, § 91; 2001, No. 1288, § 6; 2009, No. 962, § 30.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 862, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

As amended by Acts 1995, No. 65, § 1, subdivision (c)(4) also provided: "The three persons first appointed under this

subdivision shall by lot draw terms so that one expires January 14, 1996, one expires January 14, 1998 and one expires January 14, 1999. Thereafter, their successors shall serve four year terms."

Publisher's Notes. Acts 1985, No. 409, § 2 provided for the Governor to appoint two directors to serve until January 14, 1986; two directors to serve until January 14, 1987; two directors to serve until January 14, 1988; and three directors to serve until January 14, 1989.

Amendments. The 2009 amendment, in (h), deleted "thereon" following "after a hearing" and substituted "regular session, fiscal session, or special session" for "special or regular session thereof."

15-3-105. Organization.

(a) Directors of the Arkansas Science and Technology Authority shall annually elect from their membership one (1) member as chair, one (1) member as vice chair, and one (1) member as secretary.

(b)(1) The directors shall select some person who is not a member of the Board of Directors of the Arkansas Science and Technology Authority to serve at the pleasure of the Governor as President of the Arkansas Science and Technology Authority.

(2) The directors may also employ such other officers and employees as they may deem necessary.

(3) Any such officer shall be eligible for selection to succeed himself or herself.

History. Acts 1983, No. 859, § 2; 1985, No. 409, § 2; A.S.A. 1947, § 6-1602.

15-3-106. Executive committee.

(a) The directors shall establish an Executive Committee of the Arkansas Science and Technology Authority, to be composed of the

chair, the vice chair, the secretary, and two (2) additional members to be chosen by the chair from the remaining directors.

(b) The committee, in intervals between meetings of the board, may transact any business of the board that has been delegated to the committee.

(c) A majority of the committee may conduct business, and a favorable vote of three (3) members shall be deemed consent of the committee.

History. Acts 1983, No. 859, § 2; 1985, No. 409, § 2; A.S.A. 1947, § 6-1602.

15-3-107. Meetings.

(a) Directors of the Arkansas Science and Technology Authority shall meet at least one (1) time during each calendar quarter and at such other times as may be provided in the rules of the authority, upon call by the president, the chair, or upon written request of a majority of the directors.

(b) A majority of the directors shall be necessary to transact business of the authority, and all actions of the directors shall be by a majority vote of the full number of the members of the Board of Directors of the Arkansas Science and Technology Authority.

History. Acts 1983, No. 859, § 2; 1985, No. 409, § 2; A.S.A. 1947, § 6-1602.

15-3-108. Nature, powers, and duties generally.

(a) The Arkansas Science and Technology Authority shall be a body corporate and politic, having the powers and jurisdiction hereinafter enumerated and additional powers as conferred upon it by the General Assembly or by the people of this state.

(b) The authority is authorized and designated to engage in undertakings, programs, enterprises, and activities involving agriculture, manufacturing, medical and health care, transportation, public utility services, research and development, and other programs involving the establishment and encouragement of science and technological research.

(c) The authority and its board, employees, and agents shall be immune from civil liability for performing the duties of the authority under this chapter.

(d) In the furtherance of its purposes, the authority shall have all the powers necessary to carry out its purposes, which shall include, but not be limited to:

- (1) Make, amend, and repeal bylaws, rules, and regulations for the management of its affairs;
- (2) Adopt an official seal;
- (3) Sue and be sued in its own name;

(4) Make contracts and execute all instruments necessary or convenient for carrying out its business;

(5) Acquire, own, hold, dispose of, and encumber real or personal property of any nature, both tangible and intangible, or any interest therein;

(6) Enter into agreements or other transactions with any federal, state, county, or municipal agency and with any individual, corporation, firm, association, or any other entity involving science and technology;

(7) Acquire real property or an interest in real property by purchase or foreclosure when such an acquisition is necessary or appropriate to protect or secure any investment or loan in which the authority has an interest;

(8) Sell, transfer, and convey any such property to a buyer, and in the event the sale, transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, lease the property to a tenant;

(9) Invest any funds appropriated by the state and held in reserve in funds not required for immediate disbursement, in investments that may be lawful for fiduciaries in the State of Arkansas, and invest funds received from gifts, grants, donations, and other operations of the authority in investments that would be lawful for a private corporation having purposes similar to the authority;

(10) Borrow money and give guaranties, provided that the indebtedness and other obligations of the authority shall be payable solely out of its own resources and shall not constitute a pledge of the full faith and credit of the State of Arkansas or any of its revenues;

(11) Appoint officers, employees, consultants, agents, and advisors and prescribe their duties;

(12) Appear in its own behalf before boards, commissions, departments, or other agencies of municipal, county, state, or federal government;

(13) Procure insurance against any losses in connection with its properties in amounts from insurers that may be necessary or desirable;

(14) Consent, subject to the provisions of any contract with noteholders, whenever it deems it necessary or desirable in the fulfillment of the purposes of this chapter, to the modifications with respect to the rate of interest, time payment, or of any installment, of principal and interest, or any terms of any contract or agreement of any kind to which the authority is a party;

(15)(A) Accept any and all donations, grants, bequests, and devises, conditional or otherwise, of money, property, services, or other things of value that may be received from the federal government or any agency thereof, any governmental agency, or any institution, person, firm, or corporation, public or private, to be held, used, or applied for any or all of the purposes specified in this chapter in accordance with the terms and conditions of any such grant.

(B) Receipt of each such donation or grant shall be detailed in the annual report of the authority.

(C) This report shall include the identity of the donor or lender, the nature of the transaction, and any conditions attaching thereto;

(16) Trade, buy, or sell qualified securities;

(17) Finance, conduct, or cooperate in the financing or conducting of scientific, technological, business, financial, or other investigations that are related or likely to lead to business and economic development involving science and technology by making and entering into contracts or other appropriate arrangements, including the provision of grants, loans, and other forms of assistance;

(18) Solicit, study, and assist in the preparation of business plans and proposals of new or established science and technologically oriented businesses and advance the state of science in Arkansas for those purposes;

(19) Prepare, publish, and distribute, with or without charge as the authority may determine, such technological studies, reports, bulletins, and other materials as it deems appropriate, subject only to the maintenance and responsibility for confidentiality of the client's proprietary information;

(20) Organize, conduct, sponsor, or cooperate in and assist the conduct of special institutes, conferences, demonstrations, and studies relating to the stimulation and formulation of basic science, applied science, and technologically oriented businesses and studies relating to the formulation of scientific or technologically oriented business and industry endeavors;

(21) Own and possess patents, copyrights, and proprietary processes and enter into contracts and establish charges for the use of such patents, copyrights, and proprietary processes involving science or technology;

(22) Provide and pay for advisory services and technical assistance that may be necessary or desirable to carry out the purposes of this chapter;

(23) Exercise any other powers necessary for the operation and functioning of the authority within the purposes authorized in this chapter;

(24)(A) Provide scientific and technological data and information required by the Governor, the General Assembly, or its committees, and to state agencies and cities, counties, and school districts, and to private citizens and groups, within the limitations of the resources available to the authority.

(B) This service shall be in addition to any services currently being provided to the General Assembly by any higher education institution, committee, or any other organization; and

(25) Prepare, publish, amend, and distribute a research and development plan to guide investments in research and commercialization, strategic research, and technology-based enterprises.

Amendments. The 2005 amendment added the subdivision designations in (c)(15) and (c)(24); and added (c)(25) and made a related change.

The 2007 amendment added (c) and redesignated former (c) as present (d).

15-3-109. Power to carry out programs.

(a) In relation to its authorization under this chapter to engage in undertakings, programs, enterprises, and activities involving research and development and other programs involving the establishment and encouragement of scientific and technological research, the Arkansas Science and Technology Authority shall have all the powers necessary to carry out programs which include, but are not limited to:

(1) Funding basic research at Arkansas colleges and universities as specified in § 15-3-110;

(2) Stimulating applied research partnerships between private industry and Arkansas colleges and universities and matching funds from private sources for proposed applied research projects as specified in § 15-3-110;

(3) Assisting small businesses in identifying and applying for funds to conduct research and development work on innovative technical ideas;

(4) Transferring knowledge and technology from college, university, and government laboratories to private industry;

(5) Creating, in cooperation with Arkansas colleges and universities, facilities to foster the growth of technology-based enterprises;

(6) Developing emerging product and process technologies which contribute to business and economic growth;

(7) Engaging in innovative demonstration and pilot projects involving improved education and preparation of the future workforce in the areas of science, technology, and mathematics; and

(8) Transferring knowledge and technology from colleges, universities, government entities and laboratories, and other sources of innovation to public schools.

(b) In establishing and maintaining the programs authorized by this section, the authority may utilize moneys drawn from the investment fund and such other moneys as are lawfully available to the authority for supporting its purposes.

History. Acts 1983, No. 859, § 15; 1985, No. 409, § 13; A.S.A. 1947, § 6-1615; Acts 1987, No. 210, § 1; 1989, No. 271, § 1; 1995, No. 456, § 1.

Publisher's Notes. Acts 1987, No. 210, § 3 provided that it is the intention of the act to amend Acts 1983, No. 859, §§ 15,

16, and that the remainder of Acts 1983, No. 859, as amended, shall remain in full force and effect as enacted until further amended or repealed.

Cross References. Establishment of centers of excellence, § 6-61-129.

15-3-110. Power to promote basic and applied research at Arkansas colleges and universities.

(a) The Arkansas Science and Technology Authority is empowered to make such rules and regulations as it may deem appropriate to enable

it to create and fund programs designed to promote basic and applied research at Arkansas colleges and universities and to develop technology emerging from sources of innovation in this state, including, but not limited to, colleges and universities, federal laboratories, small businesses, and inventors.

(b)(1) In carrying out its functions under this section, the Board of Directors of the Arkansas Science and Technology Authority may create such advisory committees as may be useful in evaluating research and development proposals.

(2) The memberships of these advisory committees may include both directors and staff members of the authority and other persons drawn from sources other than the authority, all of whom shall serve at the pleasure of the board.

(3) Members of such advisory committees shall serve without compensation for their membership on such committees but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(c)(1) Any moneys lawfully available to the authority for the purpose of supporting basic research at Arkansas colleges and universities shall in no event defray more than sixty percent (60%) of the total cost of the proposed basic research project being funded.

(2) The remaining forty percent (40%) of the total cost of the proposed research project shall be funded by moneys or in-kind services provided by the college or university proposing the research project.

(d)(1)(A) Any moneys lawfully available to the authority for the purpose of creating applied research partnerships between private industry and Arkansas colleges and universities shall in no event defray more than fifty percent (50%) of the total cost of the proposed applied research project.

(B) However, the contribution of the authority may, at the board's sole discretion, defray up to sixty-six and two-thirds percent (66⅔%) of the total cost of a proposed applied research project if the board finds that the participating private industry is principally located in Arkansas and employs fifty (50) or fewer persons.

(2) The proposed applied research project shall be submitted by an Arkansas college or university, and the proposal shall state that a percentage of the total cost of the proposed applied research project will be provided by private sources in accordance with the matching provisions of this subsection.

(3) The board shall approve for funding only those proposed applied research projects for which the board finds that enhanced employment opportunity within Arkansas will be a likely result.

(e)(1) Any moneys lawfully available to the authority for the purpose of supporting technology development shall in no event exceed one hundred thousand dollars (\$100,000) per project being funded.

(2) The board shall impose a reasonable, nonrefundable fee for the evaluation of the technological and economic potential of emerging technologies contained in proposals from nonpublic sources of innovation.

(3) The board is authorized to incorporate a royalty provision not to exceed five percent (5%) of net sales revenue per year for a period of not more than ten (10) years as a condition of award.

(4) The board shall approve for funding only those proposed technology development projects for which the board finds that enhanced economic opportunity within Arkansas will be a likely result.

History. Acts 1983, No. 859, § 16; 1985, No. 409, § 14; A.S.A. 1947, § 6-1616; Acts 1987, No. 210, § 2; 1989, No. 271, § 2; 1997, No. 250, § 92; 2005, No. 1232, § 11.

Publisher's Notes. As to intent of Acts 1987, No. 210, see Publisher's Note to § 15-3-109.

Acts 2005, No. 1232, § 1 provided: "Legislative intent.

"(a) Accelerate Arkansas, a statewide group of volunteers whose mission is to foster economic growth in Arkansas by raising the average Arkansas wage to the level of the national average wage by using the essential building blocks of the knowledge-based economy to create an environment supporting entrepreneurship and continuous innovation, developed its five-point strategy to increase per capita income:

"(1) Support research and development that creates jobs;

"(2) Provide incentives that make risk capital available in the funding gap;

"(3) Encourage entrepreneurship and new enterprise development;

"(4) Sustain successful existing companies; and

"(5) Increase achievement in science, technology, engineering, and mathematics education.

"(b) These core strategies focus on the economic building blocks of research, entrepreneurship, risk capital, and the science and engineering workforce.

"(c) These core strategies are consistent with and supported by the findings in:

"(1) The Department of Economic Development's Report of the Task Force for the Creation of Knowledge-Based Jobs;

"(2) The Winthrop Rockefeller Foundation's Entrepreneurial Arkansas: Connecting the Dots; and

"(3) 'Arkansas' Position in the Knowledge-Based Economy', a report prepared by the Milken Institute and the Center for Business and Economic Research at the University of Arkansas."

Amendments. The 2005 amendment substituted "one hundred thousand dollars (\$100,000)" for "fifty thousand dollars (\$50,000)" in (e)(1).

15-3-111. Additional powers.

The Arkansas Science and Technology Authority shall have such additional powers and duties as may be hereafter delegated to or imposed upon it from time to time by the General Assembly.

History. Acts 1983, No. 859, § 5; A.S.A. 1947, § 6-1605.

15-3-112. Prohibition on personal interest in contracts.

(a) No director, officer, or employee of the Arkansas Science and Technology Authority, for purpose of personal gain, shall have or attempt to have, directly or indirectly, any interest in any contract or agreement of the authority in connection with the qualified investments or other programs of the authority.

(b) The authority shall not invest, pursuant to § 15-3-122, in any qualified security of:

(1) Any enterprise that is owned, wholly or partially, directly or indirectly, by any director or officer; or

(2) Any enterprise that employs a director.

(c) It shall not be a violation of this section for the authority to permit any college, university, or other nonprofit institution with which a director is affiliated to participate in any program of the authority, provided that the director shall promptly disclose the nature of the affiliation to the Board of Directors of the Arkansas Science and Technology Authority.

(d)(1) It shall not be a violation of this section for the authority to permit a manufacturer or other for-profit entity with which a director is affiliated to pay to the authority fees for services and receive, in return for those fees, services:

(A) That are generally available to all manufacturers or other for-profit entities; and

(B) That are not available to the manufacturer or other for-profit entity solely due to its affiliation with a director.

(2)(A) A director affiliated with a manufacturer or other for-profit entity that enters into a contract or an agreement pursuant to subdivision (d)(1) of this section shall disclose the contract or agreement in writing to the president of the authority.

(B) The president of the authority shall inform the board of the contract or agreement at its next regularly scheduled meeting and attach a copy of the written disclosure to the minutes of that meeting.

History. Acts 1983, No. 859, § 17; **Amendments.** The 2007 amendment 1985, No. 409, § 15; A.S.A. 1947, § 6- added (d). 1617; Acts 2007, No. 988, § 2.

15-3-113. Studies, planning, and recommendations — Cooperation with other agencies.

(a) The Arkansas Science and Technology Authority shall, from time to time, make studies and develop plans and programs in the sciences and technologies to support industrial development in certain areas of research and development.

(b) The authority shall recommend to the General Assembly proposed laws and regulations to support the growth and development of programs and research in the sciences and specialized areas of high technology.

(c) The authority may provide leadership and assistance in cooperation with the Arkansas Transportation Commission [abolished], the Arkansas Public Service Commission, or any other federal, state, county, or municipal authority and to private industries in this state for the adoption and execution of any improvements, changes in methods of operation, rates of transportation, utilities and, zoning and building requirements and covenants which, in the opinion of the authority, may be designed to improve or better operate the existing programs and research in the sciences and specific areas of high technology and related industrial development.

History. Acts 1983, No. 859, § 6; A.S.A. 1947, § 6-1606.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However,

Acts 1989 (1st Ex. Sess.), No. 67, § 23 and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See § 23-2-201 et seq.

15-3-114. Use of land, buildings, or facilities for science and high technology.

The Arkansas Science and Technology Authority is authorized to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of any land, buildings, or facilities of any and every nature whatever that can be used in securing or developing industry, transportation facilities, research and technological laboratories and production facilities, and agricultural, medical, and scientific enterprises involving the use of science and high technology, hereinafter referred to as "industry" or "industries", within this state.

History. Acts 1983, No. 859, § 8; A.S.A. 1947, § 6-1608.

15-3-115. Pledging of credit.

The Arkansas Science and Technology Authority shall not pledge the credit of the State of Arkansas or any of its revenues, except by the authority granted to it by the General Assembly and upon approval of the electors of this state as may be required by Arkansas Constitution, Amendment 20.

History. Acts 1983, No. 859, § 5; A.S.A. 1947, § 6-1605.

15-3-116. Deposit of moneys — Audit.

(a) All moneys coming into the hands of the Arkansas Science and Technology Authority shall be deposited in one (1) or more financial institutions selected by the authority and authorized to do business in this state.

(b) Moneys received by the authority from appropriations of the General Assembly shall be deposited, administered, and accounted for in such manner as the General Assembly may provide.

(c) The authority shall provide for an audit to be performed and accepted by a certified public accountant or firm within sixty (60) days following the conclusion of each fiscal year of the authority, and shall file copies thereof with the Legislative Joint Auditing Committee.

(d) The committee may accept such audit report or direct an audit of the financial record of the authority by the staff of the committee.

History. Acts 1983, No. 859, § 7; A.S.A. 1947, § 6-1607.

15-3-117. Use of revenues — Assistance to minority businesses.

(a) The Arkansas Science and Technology Authority is authorized to use any available revenues for the accomplishment of the purposes set forth in this subchapter.

(b) In carrying out the purposes set forth in this subchapter, the authority will assist minority businesses in obtaining loans or other means of financial assistance.

(c) The terms and conditions of such loans or financial assistance, including the charges for interest and other services, will be consistent with the provisions of this subchapter.

(d) In order to comply with this requirement, efforts will be made to solicit for review and analysis proposed minority business ventures.

(e) It is further provided that basic loan underwriting standards will not be waived to inconsistently favor minority persons or businesses, or both, from the intent of the authority's lending practices.

History. Acts 1983, No. 859, § 9; 1985, Economic Development Act, § 15-4-301 et No. 409, § 7; A.S.A. 1947, § 6-1609. seq.

Cross References. Minority Business

15-3-118. Establishment of endowment fund — Deposits and disbursements.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Arkansas Science and Technology Authority Endowment Fund", hereafter known as the "endowment fund", to which shall be credited any state appropriations specifically so designated.

(b) The Board of Directors of the Arkansas Science and Technology Authority, from time to time, may increase the fund by crediting to it such unrestricted appropriations, gifts, donations, or grants from any source, in amounts as the board shall determine.

(c) No disbursement may be made from the corpus of the fund to support the Arkansas Science and Technology Authority's activities as provided in this chapter, it being intended that only the income from the fund, as earned pursuant to § 15-3-119, shall be available for such purposes.

History. Acts 1983, No. 859, § 10; 1985, No. 409, § 8; A.S.A. 1947, § 6-1610.

15-3-119. Investment of endowment fund assets.

(a) The moneys and other assets composing the Arkansas Science and Technology Authority Endowment Fund shall be invested in such manner and in such instruments as the Treasurer of State may direct.

(b) The income from the investment of the fund shall be redeposited in the fund, and such income shall be subject to appropriation under § 15-3-120 for the use of the Arkansas Science and Technology Authority in carrying out the purposes of this chapter.

History. Acts 1983, No. 859, § 11; 1985, No. 409, § 9; A.S.A. 1947, § 6-1611.

15-3-120. Creation of investment fund — Deposits credited to fund.

(a) There is created an investment fund, to be held and managed by the Arkansas Science and Technology Authority as provided in this chapter, to which shall be appropriated all net income of the Arkansas Science and Technology Authority Endowment Fund.

(b) The net income of the endowment fund so appropriated to the investment fund shall be credited to the investment fund at the times directed in the appropriations act.

(c) The Board of Directors of the Arkansas Science and Technology Authority, from time to time, may credit to the investment fund such other moneys as are available to the authority, from whatever source derived.

(d) The authority shall hold the investment fund in an account or accounts separate from other funds and shall manage its investment as set forth in § 15-3-121.

(e) All moneys received by the authority and deposited to the investment fund are specifically declared to be cash funds, restricted in their use, and to be used solely as provided in this chapter.

History. Acts 1983, No. 859, § 12; 1985, No. 409, § 10; A.S.A. 1947, § 6-1612.

15-3-121. Use of investment fund generally.

The Arkansas Science and Technology Authority may use the investment fund and the income thereof as follows:

(1) To carry out the purposes of this chapter through investment in qualified securities and through the forms of financial assistance authorized by this chapter, including, but not limited to, the following:

- (A) Loans;
- (B) Equity investments;
- (C) Leaseholds;
- (D) Management or consultant service agreements;
- (E) Loans with warrants attached that are beneficially owned by the authority;
- (F) Loans with warrants attached that are beneficially owned by a party other than the authority; and
- (G)(i) Any other contractual arrangement in which the authority is providing scientific and technological services to any federal, state,

county, or municipal agency, or to any individual, corporation, firm, association, or any other entity involving science and technology.

(ii) In connection with the provision of any form of financial assistance, the authority may enter into royalty agreements with an enterprise;

(2) To pay all or a portion of the operating expenses of the authority; and

(3) To invest in such other investments as are lawful for fiduciaries in Arkansas.

History. Acts 1983, No. 859, § 13; 1985, No. 409, § 11; A.S.A. 1947, § 6-1613.

15-3-122. Purchase of qualified securities — Prerequisites — Advisory committees.

(a) The Arkansas Science and Technology Authority may utilize the investment fund to purchase qualified securities issued by enterprises as a part of a scientific and technological project for the purpose of raising the initial capitalization for such projects subject to the conditions set forth in this section.

(b) The authority shall purchase qualified securities issued by an enterprise as a part of a scientific and technological project only after:

(1) Receipt of an application from the enterprise which contains:

(A) A business plan, including a description of the enterprise and its management, product, and market;

(B) A statement of the amount, timing, and projected use of the capital required;

(C) A statement of the potential economic impact of the enterprise, including the number, location, and types of jobs expected to be created; and

(D) Such other information as the Board of Directors of the Arkansas Science and Technology Authority shall request; and

(2) Approval of the investment by the board after the board shall find, based upon the application submitted by the enterprise and such additional investigation as the staff of the authority shall make, and incorporate in its minutes that:

(A) The proceeds of the investment will only be used to cover the initial capitalization needs of the enterprise except as hereinafter authorized;

(B) The enterprise has a reasonable chance of success;

(C) The authority's participation is necessary to the success of the enterprise because funding for the enterprise is unavailable in the traditional capital markets or because funding has been offered on terms that would substantially hinder the success of the enterprise;

(D) The enterprise has the reasonable potential to create a substantial amount of primary employment within the state;

(E) The entrepreneur and other founders of the enterprise have already made or are contractually committed to make a substantial financial and time commitment to the enterprise;

(F) The securities to be purchased are qualified securities;

(G) There is a reasonable possibility that the authority will recoup at least its initial investment; and

(H) Binding commitments have been made to the authority by the enterprise for adequate reporting of financial data to the authority, which shall include a requirement for an annual or other periodic audit of the books of the enterprise and for such control on the part of the authority as the board shall consider prudent over the management of the enterprise so as to protect the investment of the authority, including, in the discretion of the board and without limitation, right of access to financial and other records of the enterprise.

(c)(1) In carrying out its functions under this section, the board may create such advisory committees as may be useful in evaluating potential investments in qualified securities.

(2) The memberships of these advisory committees may include both directors and staff members of the authority and other persons drawn from sources other than the authority, all of whom shall serve at the pleasure of the board.

(3) Members of these advisory committees shall serve without compensation for their membership on the committees but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(d) The authority shall not make investments in qualified securities issued by enterprises in excess of the following limits:

(1) Not more than five hundred thousand dollars (\$500,000) shall be invested in the qualified securities of any one (1) enterprise; and

(2) The authority shall not own securities representing more than forty-nine percent (49%) of the voting stock of any one (1) enterprise at the time of the purchase by the authority, after giving effect to the conversion of all outstanding convertible securities of the enterprise. However, in the event of severe financial difficulty of the enterprise threatening, in the judgment of the board, the investment of the authority therein, a greater percentage of such securities may be owned by the authority.

(e) The authority may not invest nor may it commit to invest in any qualified securities prior to the board's adopting rules to govern the programs authorized under this section.

History. Acts 1983, No. 859, § 14;
1985, No. 409, § 12; A.S.A. 1947, § 6-
1614; Acts 1997, No. 250, § 93.

15-3-123. Annual report.

Unless and until otherwise provided, the Arkansas Science and Technology Authority shall make an annual report to the Governor and to both houses of the General Assembly setting forth in detail the

operations and transactions conducted by it pursuant to this chapter and any other legislation thereafter provided.

History. Acts 1983, No. 859, § 5; A.S.A. 1947, § 6-1605.

15-3-124 — 15-3-129. [Reserved.]

15-3-130. Centers for applied technology — Definition.

For the purposes of this section and §§ 15-3-131 — 15-3-134, “center for applied technology” or “center” means a college or university or university-affiliated unit, or a consortium of such units, which conducts a continuing program of basic and applied research, development, and technology transfer in one (1) or more technological areas in collaboration with and through the support of private enterprises.

History. Acts 1989, No. 803, § 4. not apply to this section which was enacted subsequently.
A.C.R.C. Notes. References to “this chapter” in §§ 15-3-101 — 15-3-123 may

15-3-131. Centers for applied technology — Authority to designate.

In order to encourage greater collaboration between private enterprises and Arkansas colleges and universities in the development and application of new technologies, the Arkansas Science and Technology Authority is authorized to designate technological areas as having significant potential for economic growth in Arkansas or in which the application of new technologies could significantly enhance the productivity and stability of Arkansas enterprises.

History. Acts 1989, No. 803, § 1. not apply to this section which was enacted subsequently.
A.C.R.C. Notes. References to “this chapter” in §§ 15-3-101 — 15-3-123 may

15-3-132. Centers for applied technology — Criteria — Designation.

(a) The Arkansas Science and Technology Authority shall:

(1) Identify technological areas for which centers should be designated, including, but not limited to, technological areas that are related to enterprises with significant potential for economic growth and development in Arkansas and areas that are related to the enhancement of productivity in various enterprises in Arkansas;

(2) Establish, in consultation with the Department of Higher Education, criteria that must be satisfied for designation as a center, including, but not limited to:

(A) An established record of research, development, and instruction in the area of technology;

(B) The capacity to conduct research and development activities in collaboration with private enterprises;

(C) The capacity to secure substantial private and other government funding for the proposed center;

(D) The ability and willingness to cooperate with other colleges and universities in conducting research and development activities and in disseminating research results and to work with institutions of higher learning to enhance the quality of technological education in the area or areas of technology involved; and

(E) The ability and willingness to cooperate with the authority, the Arkansas Economic Development Council, and other economic development agencies in promoting the growth and development in Arkansas of enterprises based upon or benefiting from the areas of technology involved; and

(3) Designate, using a competitive selection process, those centers for applied technology to be created in cooperation with colleges and universities in the state.

(b) The authority may not designate technological areas or establish centers prior to the Board of Directors of the Arkansas Science and Technology Authority's adopting rules to govern the program authorized under this section, § 15-3-130, § 15-3-131, § 15-3-133, and § 15-3-134.

History. Acts 1989, No. 803, §§ 2, 6; chapter" in §§ 15-3-101 — 15-3-123 may 1997, No. 540, § 18. not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to "this

15-3-133. Centers for applied technology — Advisory committees.

(a) In carrying out its functions under this section, §§ 15-3-130 — 15-3-132, and § 15-3-134, the Board of Directors of the Arkansas Science and Technology Authority may create such advisory committees as may be useful in evaluating potential technological areas and centers.

(b) The memberships of these advisory committees may include both directors and staff members of the Arkansas Science and Technology Authority and other persons drawn from sources other than the authority, all of whom shall serve at the pleasure of the board.

(c) Members of such advisory committees shall serve without compensation for their membership on such committees but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1989, No. 803, § 5; 1997, chapter" in §§ 15-3-101 — 15-3-123 may No. 250, § 94. not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to "this

15-3-134. Centers for applied technology — Disposition of funds.

Any moneys lawfully available to the Arkansas Science and Technology Authority for the purpose of creating centers for applied technology may be used for the purchase of equipment and fixtures, employment of faculty and support staff, provision of graduate fellowships, and other purposes approved by the authority but may not be used for capital construction.

History. Acts 1989, No. 803, § 3.

A.C.R.C. Notes. References to “this chapter” in §§ 15-3-101 — 15-3-123 may

not apply to this section which was enacted subsequently.

15-3-135. Promotion of scientific, medical, and technological jobs and infrastructure enhancements.

(a) As used in this section, the term “qualified medical company” means a corporation engaged in:

- (1) Research and development in the medical field; and
- (2) Manufacture and distribution of medical products, including therapeutic and diagnostic products.

(b)(1) All agencies, departments, boards, commissions, and other instrumentalities of this state and all political subdivisions of this state and all agencies, departments, boards, commissions, and other instrumentalities thereof, to the greatest extent possible, shall expedite the processing of all lawful applications and requests required or permitted by law which are submitted or made by qualified medical companies and, in considering all such applications and requests, give due consideration to the purposes of this section.

(2) To the extent available time, personnel, and other resources permit, all state-funded colleges and universities shall provide research assistance to the Arkansas Science and Technology Authority to assist with planning to develop scientific, medical, and technological commercial infrastructure enhancements to encourage qualified medical companies to locate in this state.

History. Acts 1995, No. 586, §§ 1–3.

A.C.R.C. Notes. References to “this chapter” in §§ 15-3-101 — 15-3-123 may

not apply to this section which was enacted subsequently.

SUBCHAPTER 2 — ARKANSAS RESEARCH MATCHING FUND

- SECTION.
- 15-3-201. Legislative intent.
 - 15-3-202. Creation.
 - 15-3-203. Administration.
 - 15-3-204. Disbursement of funds.

- SECTION.
- 15-3-205. Funds for match.
 - 15-3-206. Reporting.
 - 15-3-207. Prohibition.
 - 15-3-208. Rules and regulations.

A.C.R.C. Notes. References to “this chapter” in subchapter 1 may not apply to this subchapter which was enacted subsequently.

Effective Dates. Acts 1999, No. 1545, § 9, provided: “Effective Date. Matching grants may be authorized under this act for any federal funding awarded on or after July 1, 1999.”

Acts 1999, No. 1545, § 13: July 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that in order for the benefits of this act to be accessible in a

timeframe consistent with the availability of appropriated funds, it is necessary for the act to be effective on July 1, 1999; that the benefits of this act may provide opportunities that would not be available should funds be available and the means to use those funds not be consistent; and that funding cycles for federal grants may be present in the interim. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1999.”

15-3-201. Legislative intent.

A national ranking of Arkansas’ research performance in comparison with other states places our state forty-ninth. In order to be competitive in our economic and educational endeavors, it is critical that our research capabilities be upgraded. To be competitive will require a commitment on behalf of the state that is specifically targeted to improving our ranking among the states in the areas of science and engineering graduates, university research and development, federal research and development, and small business innovation research grants. The commitment necessary to improve our ranking is to be found in investing in research and research infrastructure.

History. Acts 1999, No. 1545, § 1.

15-3-202. Creation.

(a) There is created the Arkansas Research Matching Fund.

(b) The fund shall be administered by the Arkansas Science and Technology Authority and shall be for the benefit of colleges and universities located within the State of Arkansas.

(c) In order to qualify for the research moneys to be made available through this fund, schools must be a two-year or four-year accredited institution of post-secondary education. Consortiums of eligible institutions are eligible and encouraged to apply for these funds. The fund shall be focused on basic and strategic research.

History. Acts 1999, No. 1545, § 2.

15-3-203. Administration.

(a) In order to obtain moneys from the Arkansas Research Matching Fund:

(1) A college or university may provide the Arkansas Science and Technology Authority with the research grant proposal for federal funds

submitted with a letter of intent to apply for a match to one (1) of the funding agencies identified in § 15-3-205;

(2)(A) A college or university shall apply to the authority for a match from this fund in writing within two (2) weeks of the notice of an award of federal funds from one (1) of the funding agencies identified in § 15-3-205.

(B) In addition to the grant proposal submitted to the federal agency, the application shall include an approved budget and an official notice of the grant award from the federal funding agency; and

(3) A college or university shall adhere to the rules and regulations that may be promulgated by the authority for administration of this fund.

(b)(1) Upon receipt of an application for matching funds to match federal funds from one (1) of the funding agencies identified in § 15-3-205, the authority shall determine the eligibility for matching funds based on a finding that the proposed research is in fields having long-term economic or commercial value to the state and which have been identified in the research and development plan approved by the Board of Directors of the Arkansas Science and Technology Authority.

(2) The authority shall promptly review applications for matching funds for consistency with this subchapter.

(3) The board shall ensure that no commitments for matching funds shall be made in excess of funds available for any given year and may review and approve those applications that have:

(A) Provided the information on the application for matching funds in accordance with the provisions of this subchapter;

(B) Included an official notice of award of a research grant from one (1) of the funding agencies identified in § 15-3-205; and

(C) Filed a proposal for federal funding consistent with the types of research authorized by this subchapter.

History. Acts 1999, No. 1545, § 3;
2003, No. 417, § 1.

15-3-204. Disbursement of funds.

(a) The matching funds authorized by this subchapter are to be used primarily to attract federal funds to the state for basic and strategic research.

(b) The Board of Directors of the Arkansas Science and Technology Authority may approve multi-year research grants, but disbursements of the matching funds authorized by this subchapter shall be for no more than a twelve-month period.

History. Acts 1999, No. 1545, § 4.

15-3-205. Funds for match.

Funds used under the provisions of this subchapter shall adhere to the following criteria:

(1) Be used for the purposes of matching an approved grant from an eligible federal agency, limited to the following:

- (A) The National Science Foundation;
- (B) The National Institutes of Health;
- (C) The Department of Energy;
- (D) The Department of Defense;
- (E) The Environmental Protection Agency;
- (F) The National Aeronautics and Space Administration;
- (G) The Department of Agriculture;
- (H) The Department of Transportation;
- (I) The Department of Commerce;
- (J) The Department of Education; and
- (K) The Department of Homeland Security;

(2)(A) Proposals for federal funds that contain a specific state or federal match requirement, for the purposes of this subchapter, shall not be matched at a rate of more than fifty percent (50%), except that any portion of the match over fifty percent (50%) may be borne by the college or university.

(B) Proposals for federal funds that do not contain a specific state or federal match requirement, for the purposes of this subchapter, shall not be matched at a rate of more than ten percent (10%), provided that the state share is matched dollar for dollar by the college or university for a combined match of not more than twenty percent (20%), except that any portion of the match over twenty percent (20%) may be borne by the college or university; and

(3) A state financial match requirement of at least twenty thousand dollars (\$20,000) for equipment matching and at least fifty thousand dollars (\$50,000) for research project matching.

History. Acts 1999, No. 1545, § 5;
2005, No. 2265, § 1.

Amendments. The 2005 amendment
added (K) and made a related change.

15-3-206. Reporting.

The Arkansas Science and Technology Authority shall present to the Governor's office and the General Assembly a report on the investment from the Arkansas Research Matching Fund by April 1 of each even-numbered year.

History. Acts 1999, No. 1545, § 6.

15-3-207. Prohibition.

None of the moneys appropriated by the General Assembly for the Arkansas Research Matching Fund shall be used for the construction of new facilities.

History. Acts 1999, No. 1545, § 7.

15-3-208. Rules and regulations.

The Arkansas Science and Technology Authority has the authority to establish guidelines by which eligible institutions might access research funds created by this subchapter through the promulgation of administrative rules and regulations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1999, No. 1545, § 8.

SUBCHAPTER 3 — ARKANSAS RESEARCH ALLIANCE ACT

SECTION.	SECTION.
15-3-301. Title.	
15-3-302. Legislative intent.	versities and private business sector representatives.
15-3-303. Definitions.	
15-3-304. Collaboration of Arkansas Science and Technology Authority with research uni-	15-3-305. Areas of collaboration.
	15-3-306. Contracting with research alliance.

15-3-301. Title.

This subchapter shall be known and may be cited as the “Arkansas Research Alliance Act”.

History. Acts 2007, No. 563, § 1.

15-3-302. Legislative intent.

The General Assembly finds:

- (1) Economic growth and development in Arkansas in the twenty-first century are indisputably tied to the success of research centers and institutions in incubating high-tech industry;
- (2) The critical success factors of research institutions are available research infrastructure, talented senior researchers, suitable buildings, and effective equipment; and
- (3) Private sector leadership understands the market potential of research in economic development and the job-creating power of public-private collaboration.

History. Acts 2007, No. 563, § 1.

15-3-303. Definitions.

As used in this subchapter:

- (1) “Job-creating research” means basic and applied laboratory research that may reasonably be expected to lead to the creation of knowledge-based and high-technology jobs in Arkansas;
- (2) “Knowledge-based and high-technology jobs” means employment opportunities in positions that pay more than one and seventy-five one hundredths (1.75) times the average annual wage in the state according to the most recent data available;

(3) “Research alliance” means the collaborative functions of research universities for the purpose of:

(A) Enhancing research infrastructure;

(B) Increasing the number of talented researchers at research universities; and

(C) Expanding knowledge-based and high-technology job-creating research activities;

(4) “Research infrastructure” means the equipment, buildings, information technology connectivity, and software of research universities within which talented researchers conduct their work; and

(5) “Research university” means any university campus in Arkansas that receives significant federal funding of job-creating research.

History. Acts 2007, No. 563, § 1.

15-3-304. Collaboration of Arkansas Science and Technology Authority with research universities and private business sector representatives.

(a) The Arkansas Science and Technology Authority may work with the chancellors and presidents of research universities and the private business sector to support collaborations establishing an alliance for the purpose of improving the economy of the state through:

(1) Improving research infrastructure;

(2) Increasing the focus on job-creating research activities within or supported by the research universities; and

(3) Expanding job-creating research activities toward producing more knowledge-based and high-technology jobs in this state.

(b) The authority shall designate no more than five (5) institutions of higher education as research universities for the purposes of this subchapter.

History. Acts 2007, No. 563, § 1.

15-3-305. Areas of collaboration.

The Arkansas Science and Technology Authority may recommend that a research alliance under this subchapter:

(1) Identify specific areas where scientific research and technological investigation may contribute to the creation and growth of knowledge-based and high-technology jobs in Arkansas;

(2) Determine specific areas in which financial investment in scientific and technological research and development from federal agencies or private businesses located in Arkansas could be enhanced or increased if state resources were made available to assist in financing research infrastructure;

(3) Advise universities of the research needs of Arkansas businesses and improve the exchange of scientific and technological information for the mutual benefit of universities and private businesses;

- (4) Encourage collaborations among scholars and faculty of research universities in the areas of research identified by the alliance;
- (5)(A) Recommend state investments in research infrastructure.
- (B) In determining the recommendations for state investments in research infrastructure, the alliance shall invite from research universities:
 - (i) Assessments of the capabilities of the research universities to seize research opportunities in the areas of research identified by the alliance; and
 - (ii) Investments that would accelerate the creation of economic opportunities for the citizens of the state;
- (6) Certify investments in research infrastructure from the Arkansas Research Infrastructure Fund; and
- (7) Monitor, in the specific areas identified by the alliance:
 - (A) Growth in university research funding;
 - (B) Intellectual property creation;
 - (C) Licensing of technology to entrepreneurial firms and existing Arkansas companies;
 - (D) Growth in venture capital investments in Arkansas; and
 - (E) Employment in knowledge-based and high-technology employees.

History. Acts 2007, No. 563, § 1.

15-3-306. Contracting with research alliance.

- (a) In order to assist a research alliance in achieving the objectives identified in § 15-3-305, the Arkansas Science and Technology Authority may contract with a research alliance or any nonprofit organization recommended by a research alliance for activities consistent with the research alliance’s purpose under § 15-3-305.
- (b) When contracting with the alliance or its designee under this subchapter, the authority may directly enter into agreements with persons or entities and shall not be bound by the provisions of Arkansas procurement law requiring competitive bids.

History. Acts 2007, No. 563, § 1.

SUBCHAPTER 4 — POSTDOCTORAL SCIENCE AND ENGINEERING GRANT PROGRAM FOR ECONOMIC DEVELOPMENT AND KNOWLEDGE-BASED JOB GROWTH

SECTION.

- 15-3-401. Legislative intent.
- 15-3-402. Application for funding.
- 15-3-403. Eligibility for grants.

SECTION.

- 15-3-404. Authorization of grants.
- 15-3-405. Rules.

15-3-401. Legislative intent.

It is the intent of the General Assembly:

(1) To assist growing, technology-based enterprises by:

(A) Attracting and retaining highly trained science and engineering postdoctoral graduates by encouraging the establishment of career opportunities within the State of Arkansas;

(B) Providing scientific expertise to emerging technology-based enterprises by helping them hire postdoctoral graduates to address the needs of these businesses; and

(C) Developing a growing core of scientific job talent in Arkansas by attracting and retaining postdoctoral science and engineering graduates; and

(2) That the establishment of the postdoctoral science and engineering grant program shall benefit the State of Arkansas as a whole and that provisions be made to ensure that all parts of the state have an opportunity to benefit from this subchapter.

History. Acts 2009, No. 463, § 1.

15-3-402. Application for funding.

(a) The Arkansas Science and Technology Authority shall make available forms upon which a business eligible for a grant under § 15-3-403 may apply for a grant to support the hiring of postdoctoral science and engineering graduates to work in areas of their expertise in Arkansas.

(b) Within thirty (30) days of the receipt of an application, the authority shall notify the applicant whether:

(1) The applicant meets the criteria for benefits; and

(2) Funds are available to assist the business in the hiring of postdoctoral science and engineering graduates.

History. Acts 2009, No. 463, § 1.

15-3-403. Eligibility for grants.

To qualify for a grant authorized under § 15-3-404, a business shall:

(1) Have operations within the State of Arkansas that are in one (1) of the six (6) categories of targeted businesses identified in § 15-4-2703(43)(A);

(2) Pay average hourly wages in excess of one hundred ten percent (110%) of the county or state average hourly wage, whichever is less;

(3) Agree to hire a postdoctoral graduate; and

(4) Provide proof that the postdoctoral graduate is an Arkansas taxpayer and a resident of the State of Arkansas.

History. Acts 2009, No. 463, § 1.

15-3-404. Authorization of grants.

(a) If an applicant meets the requirements of § 15-3-403, the applicant shall be placed in one (1) of the following four (4) levels and be eligible for a grant for up to five (5) years:

(1)(A) An eligible business with a payroll in excess of ten million dollars (\$10,000,000) is eligible to receive a grant of up to thirty-five thousand dollars (\$35,000) over the five-year period.

(B) If approved, the business will receive:

(i) Ten thousand dollars (\$10,000) in year one (1);

(ii) Ten thousand dollars (\$10,000) in year two (2);

(iii) Seven thousand five hundred dollars (\$7,500) in year three (3);

(iv) Five thousand dollars (\$5,000) in year four (4); and

(v) Two thousand five hundred dollars (\$2,500) in year five (5);

(2)(A) An eligible business with a payroll in excess of five million dollars (\$5,000,000) but no more than ten million dollars (\$10,000,000) may be eligible to receive a grant of up to fifty-two thousand five hundred dollars (\$52,500) over the five-year period.

(B) If approved, the business will receive:

(i) Fifteen thousand dollars (\$15,000) in year one (1);

(ii) Fifteen thousand dollars (\$15,000) in year two (2);

(iii) Eleven thousand two hundred fifty dollars (\$11,250) in year three (3);

(iv) Seven thousand five hundred dollars (\$7,500) in year four (4); and

(v) Three thousand seven hundred fifty dollars (\$3,750) in year five (5);

(3)(A) An eligible business with a payroll in excess of at least one million dollars (\$1,000,000) but no more than five million dollars (\$5,000,000) may be eligible to receive a grant of up to seventy thousand dollars (\$70,000) over the five-year period.

(B) If approved, the business will receive:

(i) Twenty thousand dollars (\$20,000) in year one (1);

(ii) Twenty thousand dollars (\$20,000) in year two (2);

(iii) Fifteen thousand dollars (\$15,000) in year three (3);

(iv) Ten thousand dollars (\$10,000) in year four (4); and

(v) Five thousand dollars (\$5,000) in year five (5); and

(4)(A) An eligible business with a payroll of less than one million dollars (\$1,000,000) may be eligible to receive a grant of up to eighty-seven thousand five hundred dollars (\$87,500) over the five-year period.

(B) If approved, the business will receive:

(i) Twenty-five thousand dollars (\$25,000) in year one (1);

(ii) Twenty-five thousand dollars (\$25,000) in year two (2);

(iii) Eighteen thousand seven hundred fifty dollars (\$18,750) in year three (3);

(iv) Twelve thousand five hundred dollars (\$12,500) in year four (4); and

(v) Six thousand two hundred fifty dollars (\$6,250) in year five (5).

(b) The grants authorized by this section shall be administered and paid according to rules established by the Arkansas Science and Technology Authority.

(c) The authority shall not provide further grant funds to the approved business if at any time during the five-year grant period the postdoctoral graduate is no longer employed in Arkansas by the approved business.

History. Acts 2009, No. 463, § 1.

15-3-405. Rules.

(a) The Arkansas Science and Technology Authority, through the promulgation of rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall establish procedures consistent with this subchapter to carry out the intent of this legislation.

(b) The authority shall establish by rule opportunities for assisting in the hiring of postdoctoral graduates in each of the four (4) congressional districts in the state.

History. Acts 2009, No. 463, § 1.

CHAPTER 4 DEVELOPMENT OF BUSINESS AND INDUSTRY GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS ECONOMIC DEVELOPMENT COUNCIL.
3. MINORITY BUSINESS ECONOMIC DEVELOPMENT ACT.
4. JOBS CREATION BY STIMULATING SMALL BUSINESS GROWTH ACT OF 1985.
5. INDUSTRIAL DEVELOPMENT CORPORATIONS.
6. INDUSTRIAL REVENUE BOND GUARANTY LAW.
7. INDUSTRIAL DEVELOPMENT GUARANTY BOND ACT.
8. ARKANSAS ENTERPRISE ZONE ACT OF 1989. [EXPIRED.]
9. ARKANSAS DEVELOPMENT FINANCE CORPORATION ACT.
10. ARKANSAS CAPITAL DEVELOPMENT COMPANY ACT.
11. STEEL MILL TAX INCENTIVES. [REPEALED.]
12. COUNTY AND REGIONAL INDUSTRIAL DEVELOPMENT COMPANY ACT.
13. ARKANSAS LINKED DEPOSIT PROGRAM ACT. [REPEALED.]
14. INVENTORS' ASSISTANCE ACT.
15. ARKANSAS AVIATION AND AEROSPACE COMMISSION. [REPEALED.]
16. ARKANSAS ECONOMIC DEVELOPMENT INCENTIVE ACT OF 1993.
17. ARKANSAS ENTERPRISE ZONE ACT OF 1993.
18. MAJOR INDUSTRY FACILITIES INCENTIVE ACT.
19. ARKANSAS ECONOMIC DEVELOPMENT ACT OF 1995.
20. DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT OF 2009.
21. ARKANSAS EMERGING TECHNOLOGY DEVELOPMENT ACT OF 1999.
22. ARKANSAS WORKFORCE INVESTMENT ACT.
23. ARKANSAS PUBLIC ROADS IMPROVEMENTS CREDIT ACT.
24. STEEL MANUFACTURERS' TAX EXEMPTIONS AND CREDITS.
25. SMALL BUSINESS LOAN COLLABORATION PROGRAM.

SUBCHAPTER

- 26. ARKANSAS DELTA DEVELOPMENT COMMISSION.
- 27. CONSOLIDATED INCENTIVE ACT OF 2003.
- 28. BIODIESEL INCENTIVE ACT.
- 29. ARKANSAS WORKFORCE INVESTMENT BOARD AND ADULT EDUCATION STUDY COMMITTEE.
- 30. ARKANSAS GENERAL OBLIGATION ECONOMIC DEVELOPMENT SUPERPROJECTS BOND AND PROJECT FUNDING ACT.
- 31. NONPROFIT INCENTIVE ACT OF 2005.
- 32. ARKANSAS AMENDMENT 82 IMPLEMENTATION ACT.
- 33. EQUITY INVESTMENT INCENTIVE ACT OF 2007.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 15-4-101. Title.
- 15-4-102. Construction.
- 15-4-103. Registration of community development corporations.

SECTION.

- 15-4-104. Bond guaranty programs for employee stock purchases.

Cross References. Tax incentives for production of motion pictures, § 26-4-201 et seq.

Effective Dates. Acts 1979, No. 65, § 10: approved Feb. 7, 1979. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the State of Arkansas has had heretofore an inadequate program for the economic development of the State and its several sections; that on account of such inadequate program the State of Arkansas has been unable to provide for its inhabitants sufficient opportunities in agriculture and industry; that unless an adequate program for the economic development of the State be immediately undertaken the State of Arkansas will suffer immediate and irreparable further loss in the opportunity for economic expansion; and that only by the passage of this Act and giving immediate effect to its provisions can the State of Arkansas further secure for its inhabitants opportunities for economic development. An emergency, therefore, is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1981, No. 41, § 10: Feb. 10, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Industrial Development Commission as established by Act 404 of 1955 rendered great service to

the State of Arkansas in developing programs, objectives, and goals for the industrial development of this State, and that the 'AIDC' emblem became symbolic, not only in this State but throughout the Nation, of Arkansas' outstanding industrial and economic potential and growth; and that the reestablishment of the Arkansas Department of Industrial Development and the Arkansas Industrial Development Commission (AIDC) is essential to the State in gaining the continuing advantages of the economic progress instituted more than a quarter of a century ago; and that the immediate passage of this Act is necessary to accomplish said purposes and to provide means for accelerated progress in the economic development of this State, thereby providing for increased payrolls, job opportunities, and tax income for the support of the public services of this State. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1584, § 5: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that unless this act becomes effective immediately, there is substantial risk of Arkansas jobs leaving this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of

the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration

of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-4-101. Title.

This act shall be referred to and may be cited as the "Arkansas Industrial Development Act".

History. Acts 1981, No. 41, § 1; A.S.A. 41, codified as §§ 15-4-101, 15-4-202, 15-1947, § 9-504. 4-203, 25-11-101, 25-11-102.

Meaning of "this act". Acts 1981, No.

15-4-102. Construction.

(a) This section and §§ 15-4-101, 15-4-201 — 15-4-204, 15-4-206, and 15-4-209 — 15-4-212, and § 15-4-501 et seq. shall be construed liberally.

(b) The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History. Acts 1979, No. 65, § 7; A.S.A. 1947, § 9-540.

15-4-103. Registration of community development corporations.

(a) For purposes of this section, "qualified community development corporation" means an organization chartered under the Arkansas nonprofit corporation law which:

(1) Is governed by a board consisting of the area's business, professional, and civic leaders;

(2) Has a record of implementing economic development projects or whose articles of incorporation or bylaws state the organization's mission to develop and improve local communities through economic and related development;

(3) Has secured from the federal Internal Revenue Service a section 501(c)(3) tax exemption status; and

(4) Otherwise meets the federal definition of a community development corporation.

(b) The Secretary of State shall maintain a registry of all qualified community development corporations established under the laws of Arkansas.

(c)(1) Every qualified community development corporation shall register with the Secretary of State within ninety (90) days after August 13, 1993, or within ninety (90) days after the date of its establishment if established after August 13, 1993.

(2) The Secretary of State shall collect a registration fee of twenty-five dollars (\$25.00) from each community development corporation registered under this section.

History. Acts 1993, No. 989, §§ 1-3.
U.S. Code. Section 501(c)(3) of the Internal Revenue Code referred to in this section, is codified as 26 U.S.C.S. § 501(c)(3).

Cross References. Arkansas Non-profit Corporation Act, § 4-28-201 et seq.
Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.

15-4-104. Bond guaranty programs for employee stock purchases.

(a) When an Arkansas-based employee stock ownership plan buys at least twenty percent (20%) of the stock of an Arkansas-based business entity formed under Arkansas law and the Director of the Arkansas Economic Development Commission determines that had it not been for the purchase by the employee stock ownership plan that Arkansas jobs would have been lost, the Arkansas-based business entity shall be qualified for any bond guaranty programs administered by the Arkansas Economic Development Commission or the Arkansas Development Finance Authority.

(b) The commission and the authority shall promulgate regulations necessary for the implementation of this section.

History. Acts 1999, No. 1584, § 1.

SUBCHAPTER 2 — ARKANSAS ECONOMIC DEVELOPMENT COUNCIL

- SECTION.
- 15-4-201. Creation.
 - 15-4-202. Members.
 - 15-4-203. Organization and meetings.
 - 15-4-204. Functions, powers, and duties.
 - 15-4-205. Arkansas Economic Development Commission — Information and investigations.
 - 15-4-206. Arkansas Economic Development Commission — Director.
 - 15-4-207. Arkansas Economic Development Commission — Duties regarding tax exemption to industries.
 - 15-4-208. Arkansas Economic Development Commission — Cooperation with other states and federal government.

- SECTION.
- 15-4-209. Arkansas Economic Development Commission — Additional functions, powers, and duties.
 - 15-4-210. Overseas operation — Reports.
 - 15-4-211. Overseas program — Personnel.
 - 15-4-212. Sale of property.
 - 15-4-213. Rural development generally.
 - 15-4-214. Interagency contracts.
 - 15-4-215. [Repealed.]
 - 15-4-216, 15-4-217. [Repealed.]
 - 15-4-218. Access to industrial sites.
 - 15-4-219. Annual report.
 - 15-4-220. Audit of economic incentive programs.

Cross References. Arkansas Energy Reorganization and Policy Act of 1981, § 15-10-201 et seq.

Compacts between counties and cities for industrial development, § 14-165-201 et seq.

Effective Dates. Acts 1939, No. 68, § 10: Feb. 10, 1939. Emergency clause provided: "Because the act creating the present Agricultural and Industrial Commission expires on March 25, 1939; and after that time there will be no other Commission to carry into effect the provisions of the Tax Exemption Amendment; and such a Commission being required; and, because competitive bidding for new industrial investments among our neighboring states is now intense, and Arkansas should take full advantage of every opportunity; and, it being immediately necessary for the preservation of the public peace, health and safety; an emergency is hereby declared to exist, and this act shall take effect and be in full force from and after its passage and approval."

Acts 1955, No. 404, § 40: approved Mar. 29, 1955. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the State of Arkansas has had heretofore an inadequate program for the agricultural and industrial development of the state and of its several sections, that on account of such inadequate program the State of Arkansas has been unable to provide for its inhabitants sufficient opportunities in agriculture and industry, that on account thereof the State of Arkansas has suffered great losses of population and a decreasing standard of living for its inhabitants, that unless an adequate program for the agricultural and industrial development of the state be immediately undertaken the State of Arkansas will suffer immediate and irreparable further loss in population and the opportunity for agricultural and industrial expansion, and that only by the passage of this act and giving immediate effect to its provisions can the State of Arkansas prevent further losses in population and secure to its inhabitants opportunities for agricultural and industrial development. An emergency, therefore, is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall, except as to Sections 11 and 12, hereof, take effect and be in full force from and after its passage."

Acts 1965, No. 553, § 3: Mar. 24, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the activities of the Industrial Development Commission are vital to the

economic growth and expansion of this state and in providing vitally needed new job opportunities in our rapidly changing technological world, and that an effective industrial development commission representing a broad cross-section of the various economic aspects of this state is highly desirable in order that said Commission might represent all phases of economic life, and that the immediate passage of this act is essential to provide additional members of said Commission in order that the same might accomplish the aforementioned objectives. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1968 (2nd Ex. Sess.), No. 11, § 6: June 12, 1968. Emergency clause provided: "The General Assembly finding that the industrial development of the State of Arkansas is retarded on account of the lack of adequate financing available to secure and develop new industry within the state and to expand and develop presently existing industries, and that only by this act can additional financing for the industrial development of the state be made immediately available, an emergency, therefore, is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 443, § 3: June 30, 1971.

Acts 1975 (Extended Sess., 1976), No. 1015, § 8: Jan. 27, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in Extended Session, that the State of Arkansas must immediately attempt to secure overseas investment in order to provide more jobs for Arkansas citizens. In order to stay competitive the immediate effectiveness of this act is essential as delay could result in the loss of new jobs and investment and could work irreparable harm upon the state's industrial development program. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1979, No. 65, § 10: approved Feb. 7, 1979. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the State of Arkansas has had heretofore an inadequate program for the economic development of the State and its several sections; that on account of such inadequate program the State of Arkansas has been unable to provide for its inhabitants sufficient opportunities in agriculture and industry; that unless an adequate program for the economic development of the State be immediately undertaken the State of Arkansas will suffer immediate and irreparable further loss in the opportunity for economic expansion; and that only by the passage of this Act and giving immediate effect to its provisions can the State of Arkansas further secure for its inhabitants opportunities for economic development. An emergency, therefore, is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1981, No. 41, § 10: Feb. 10, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Industrial Development Commission as established by Act 404 of 1955 rendered great service to the State of Arkansas in developing programs, objectives, and goals for the industrial development of this State and that the 'AIDC' emblem became symbolic, not only in this State but throughout the Nation, of Arkansas' outstanding industrial and economic potential and growth; and that the reestablishment of the Arkansas Department of Industrial Development and the Arkansas Industrial Development Commission (AIDC) is essential to the State in gaining the continuing advantages of the economic progress instituted more than a quarter of a century ago; and that the immediate passage of this Act is necessary to accomplish said purposes and to provide means for accelerated progress in the economic development of this State, thereby providing for increased payrolls, job opportunities, and tax income for the support of the public services of this State. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and

safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 249, § 4: Feb. 27, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the immediate passage of this act is necessary for Agricultural and Industrial interests to be properly represented on the Arkansas Industrial Development Commission. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 452, § 5: Mar. 12, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the immediate passage of this act is necessary for Agricultural and Industrial interests to be properly represented on the Arkansas Industrial Development Commission. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 627, § 3: Mar. 22, 1983. Emergency clause provided: "It is hereby found, determined and declared by the General Assembly of the State of Arkansas that the efficient operation of the Arkansas European Office is essential to the economic development of the State by expanding investments in Arkansas and increased export of the State's agricultural and industrial products, and that delay in the implementation of this Act's provisions would seriously hamper the effective administration of the Arkansas European Office. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 91, § 3: Feb. 27, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present composition of the Arkansas Industrial Development Commission is based upon the Congressional Districts as they existed over thirty years ago; that the representation should be more fairly representative of the various

areas of the State; that this Act provides such equitable treatment; that Act 1005 expires on June 30, 1987 unless this Act goes into effect before that time; that unless this emergency clause is enacted this Act may not go into effect until after June 30, 1987. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 668, § 3: Apr. 6, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly that the immediate passage of this Act will help to insure that agricultural interests are properly represented on the Arkansas Industrial Development Commission. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 885, § 6: Mar. 22, 1989. Emergency clause provided: "It is hereby found and declared that there is an immediate and urgent need to facilitate the development of agriculture and agricultural businesses in the State of Arkansas. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (1st Ex. Sess.), No. 280, § 41: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1993, No. 1172, § 47: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 418, § 9: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995, No. 589, § 6: Mar. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's economic development and potential for marketing Arkansas products in foreign markets. The maintenance of overseas offices is vital to the continuation of market development for Arkansas's efforts. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health

and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1997, No. 419, § 41: July 1, 1997. Emergency clause provided: “It is hereby found and determined by the Eighty-first General Assembly, that the Constitution

of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997.”

Acts 2007, No. 1602, § 8: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act renames the Department of Economic Development and the Arkansas Economic Development Commission and that the ideal time to implement these names changes is at the beginning of the state’s fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.”

15-4-201. Creation.

There is created and established at the seat of government of this state a council to be known as the “Arkansas Economic Development Council”, hereinafter referred to as the “council”.

History. Acts 1955, No. 404, § 1 [2]; A.S.A. 1947, § 9-505; Acts 1997, No. 540, § 19; 2007, No. 1602, § 3.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided: “SECTION 1. Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned

to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Develop-

ment may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 2, provided: "SECTION 2. Arkansas Economic Development Commission renamed Arkansas Economic Development Council.

"(a)(1) The Arkansas Economic Development Commission, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Council is established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Economic Development Commission.

"(3) The Chair of the Arkansas Economic Development Commission shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and authority of the Arkansas Economic Development Commission before the effective date of the name change.

"(c) Appropriations authorized for the personal services and operating expenses of the Arkansas Economic Development Commission may be utilized for the personal services and operating expenses of the Arkansas Economic Development Council."

Acts 2007, No. 1602, § 6, provided: "SECTION 6.

"(a) This act shall not be construed as impairing the continued effectiveness of any rules or orders promulgated or issued by the Department of Economic Development or the Arkansas Economic Development Commission before the effective date of this act.

"(b) This act shall not be construed as extinguishing or otherwise affecting the unexpired terms of any current members of the Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 7, provided: "SECTION 7. The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act."

Publisher's Notes. Acts 1939, No. 68, §§ 1, 2, which created the State Agricultural and Industrial Commission, were superseded by Acts 1945, No. 138, which abolished the commission and transferred its functions to the Division of Agriculture and Industry in the Arkansas Resources and Development Commission. Acts 1955, No. 404, § 7 abolished the Division of Agriculture and Industry in the Arkansas Resources and Development Commission and transferred its functions to the Arkansas Industrial Development Commission. Acts 1971, No. 38, § 6 transferred the Arkansas Industrial Development Commission and its functions, by a type 4 transfer, to the Department of Industrial Development. Acts 1979, No. 65, § 2 created the Department of Economic Development and the Arkansas Economic Development Commission, transferring the Arkansas Department of Industrial Development and the Arkansas Industrial Development Commission, together with their functions, to the Department of Economic Development, except where otherwise expressly specified.

Acts 1981, No. 41, § 7, abolished the Arkansas Department of Economic Development and the Arkansas Economic Development Commission; transferred all contracts, agreements, liabilities, funds, and appropriations to the Arkansas Department of Industrial Development and the Arkansas Industrial Development Commission; and transferred all powers, functions, and duties of the Director of the Department of Economic Development and all laws governing the appointment, replacement, or removal of the Director of the Department of Economic Development to the Director of the Department of Industrial Development and the Industrial Development Commission.

Amendments. The 2007 amendment substituted "council" for "commission" in three places.

15-4-202. Members.

(a)(1) The Arkansas Economic Development Council shall consist of sixteen (16) members, who shall be residents and qualified electors of

this state, to be appointed by the Governor by and with the advice and consent of the Senate.

(2)(A) At least three (3) members shall be appointed from each of the four (4) congressional districts existing on January 1, 1987.

(B) Four (4) members shall be appointed at large.

(3) The members so appointed by the Governor shall be selected with special reference to their knowledge of and interest in the resources and industrial development of the State of Arkansas. -

(b) For each member appointed by the Governor, the term of office shall commence on January 15 following the expiration date of the preceding term and shall end on January 14 of the fourth year following the year in which the regular term commenced.

(c) Any vacancy arising in the membership of the commission so appointed by the Governor for any reason other than expiration of the regular terms for which the members were appointed shall be filled by appointment by the Governor to be thereafter effective until the expiration of the terms, subject, however, to the confirmation of the Senate when it is next in session.

(d) Before entering upon his or her duties, each member of the council shall take and subscribe and file in the office of the Secretary of State an oath to support the Constitution of the United States and the Constitution of the State of Arkansas and to faithfully perform the duties of the office upon which he or she is about to enter.

(e) Members of the council may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1955, No. 404, §§ 3-6; § 2; A.S.A. 1947, §§ 9-506 — 9-509; Acts 1965, No. 553, §§ 1, 2; 1979, No. 65, § 3; 1987, No. 91, § 1; 1987, No. 668, § 1; 1981, No. 41, § 4; 1981, No. 249, §§ 1, 2; 1989, No. 885, § 1; 1997, No. 250, § 95. 1981, No. 452, §§ 1-3; 1985, No. 1005,

15-4-203. Organization and meetings.

(a)(1) The Arkansas Economic Development Council, from time to time, shall select from its membership a chair and a vice chair.

(2) The Director of the Arkansas Economic Development Commission shall be ex officio Secretary of the Arkansas Economic Development Council but shall have no vote on matters coming before it.

(b)(1) The council shall adopt and may modify rules for the conduct of its business and shall keep a public record of its transactions, findings, and determinations.

(2) The rules shall provide for regular meetings and for special meetings at the call of the Chair of the Arkansas Economic Development Council or of the Vice Chair of the Arkansas Economic Development Council if he or she is for any reason the acting chair, either at his or her own instance or upon the written request of at least six (6) members.

(3) A quorum shall consist of not fewer than six (6) members present at any regular or special meeting, and an affirmative vote of that number shall be necessary for the disposition of any business.

History. Acts 1955, No. 404, § 9; 1968 § 4; 1981, No. 41, § 5; A.S.A. 1947, § 9- (2nd Ex. Sess.), No. 11, § 1; 1979, No. 65, 512; Acts 1997, No. 540, § 64.

15-4-204. Functions, powers, and duties.

(a) The Arkansas Economic Development Council shall have and be subject to all functions, powers, and duties imposed upon it by this act.

(b) For the purpose of regulating its own procedure and carrying out its functions, the commission shall have the authority from time to time to make, amend, and enforce all reasonable rules or regulations not inconsistent with law which will aid in the performance of any of the functions, powers, or duties conferred or imposed upon it by law.

(c) In addition, the council shall have the function, power, and duty within the bounds of its financial means to approve:

(1) The articles of incorporation of any local industrial corporation prior to its submission to the Secretary of State for filing;

(2) The issuance of bonds by any local industrial development corporation; and

(3) Guaranties of amortization payments on Act No. 9 bonds, as provided for in the Industrial Revenue Bond Guaranty Law, § 15-4-601 et seq.

History. Acts 1955, No. 404, §§ 7, 8; 404, codified as §§ 15-4-201 — 15-4-204, 1971, No. 443, § 1; 1979, No. 65, § 4; 15-4-206, 15-4-209, 15-4-212, 15-4-501 — A.S.A. 1947, §§ 9-510, 9-511. 15-4-525.

Meaning of “this act”. Acts 1955, No.

15-4-205. Arkansas Economic Development Commission — Information and investigations.

(a) The objects and purposes of the Arkansas Economic Development Commission shall be to:

(1) Gather and assemble information, make investigation, compile statistics and data in respect to the natural and agricultural resources within the State of Arkansas, and catalogue and publish the same in any form deemed helpful in the development of the resources;

(2) Distribute the information in a manner or form appropriate for the promotion of industrial enterprise within the State of Arkansas or the procuring of locations within the State of Arkansas of manufacturing or processing enterprises for the development of natural resources; and

(3) Foster and encourage the development of industrial utilization of agricultural and mineral products of the State of Arkansas, and in general to encourage helpful industries within the state.

(b) The commission shall perform such other duties in the field of agriculture and industry as may be consistent with the purposes of this act.

History. Acts 1939, No. 68, § 3; A.S.A. 1947, § 9-501; Acts 1997, No. 540, § 65.

Meaning of “this act”. Acts 1939, No. 68, codified as §§ 14-54-107, 15-4-205, 15-4-207, 15-4-208.

Cross References. Establishment of centers of excellence, § 6-61-129.

15-4-206. Arkansas Economic Development Commission — Director.

(a) The Director of the Arkansas Economic Development Commission shall be appointed by the Governor with the consent of the Arkansas Economic Development Council and be subject to confirmation by the Senate. The director shall serve at the pleasure of the Governor.

(b)(1) The council shall be charged with the duty of administering the provisions of this act.

(2) By resolution duly adopted, the council may delegate to the director any of the powers or duties vested in or imposed upon it by this act.

(3) These delegated powers and duties may be exercised by the director in the name of the council.

(c)(1) The director shall be a person who shall have had technical training in business administration and economics and not less than three (3) years' practical administrative and field experience in economic and industrial research and development.

(2) He or she shall be custodian of all property held in the name of the Arkansas Economic Development Commission and shall be the ex officio disbursing agent of all funds available for its use.

(3) He or she shall furnish a bond to the state with a corporate surety thereon in the penal sum of ten thousand dollars (\$10,000), conditioned that he or she will faithfully perform his or her duties of employment and properly account for all funds received and disbursed by him or her.

(4) An additional disbursing agent's bond shall not be required of the director.

(5) The bond so furnished shall be filed with the Secretary of State and an executed counterpart thereof shall be filed with the Auditor of State.

(d) Notwithstanding his or her primary responsibility, the director may designate one (1) of his or her assistants to receive and disburse funds of the commission. The assistants so designated shall be required to furnish bond with a corporate surety thereon in such amount as shall be determined by the director. This bond, together with such bonds as the director may require of other employees, shall be filed in the office of the commission. The premium on all such bonds shall be paid by the commission.

History. Acts 1955, No. 404, § 10; 1979, No. 65, § 4; 1985, No. 712, §§ 1, 2; A.S.A. 1947, § 9-513; Acts 1997, No. 540, § 20.

A.C.R.C. Notes. The operation of subdivisions (c)(3) and (5) were suspended by adoption of a self-insured fidelity bond program for public officers, officials, and

employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subdivisions may again become effective upon cessation of coverage under that program. See § 21-2-703.

Meaning of "this act". See note to § 15-4-204.

15-4-207. Arkansas Economic Development Commission — Duties regarding tax exemption to industries.

The Arkansas Economic Development Commission shall be the official state agency to act with the Governor in carrying out the provisions of Arkansas Constitution, Amendment 27, which provides for the granting of a limited exemption of state taxes to new manufacturing or processing investments in Arkansas for a period of from one (1) to ten (10) years.

History. Acts 1939, No. 68, § 4; A.S.A. 1947, § 9-502; Acts 1997, No. 540, § 66.

15-4-208. Arkansas Economic Development Commission — Cooperation with other states and federal government.

The Arkansas Economic Development Commission is empowered to cooperate with similar agencies existing in other states, with the several federal departments, and with other boards, commissions, and departments of the state government. Cooperation shall be for the purpose of coordinating laws, rules, and regulations governing the interstate movement of all agricultural products and articles of commerce relating thereto with the view of properly safeguarding Arkansas against plant and animal diseases, insects, and pests and at the same time endeavoring to eliminate the trade barriers that have arisen between states.

History. Acts 1939, No. 68, § 5; A.S.A. 1947, § 9-503; Acts 1997, No. 540, § 66.

15-4-209. Arkansas Economic Development Commission — Additional functions, powers, and duties.

In addition to its functions, powers, and duties now provided by law, it shall be the function, power, and duty of the Arkansas Economic Development Commission within the bounds of its financial means to:

(1) Bring labor, industry, and agriculture into the closest and fullest possible accord for the development of the state's resources and the furtherance of its industry;

(2) Assemble and publicize all available information pertinent to the industrial opportunities afforded by this state, both in respect to particular sections and the state as a whole, including the raw material and the products producible therefrom, the water and power resources, transportation facilities, available markets, labor supply, industrial sites, and banking and credit facilities, all to the end of encouraging both the establishment of new industrial enterprises and the expansion of industries already existing;

(3) Cooperate with civic organizations devoted to the welfare and development of the state, or of particular sections, and to receive from such organizations and also from other sources similarly interested

contributions to be used in the furtherance of any of the commission's functions;

(4) Prepare and publicize through the various appropriate media, including paid advertisements in instances in which appropriations have been made available for that purpose, information for the purpose of bringing into and establishing new industry in the state;

(5) Purchase, lease, rent, or sell and receive bequests or donations of any real, corporeal, or personal property;

(6) Contract and be contracted with;

(7) Establish and administer an industry training program to train workers for new manufacturing jobs in new or expanded plants of new manufacturing companies characterized by one (1) or more of the following criteria: a high average skill, a high average wage, rapid national growth, or jobs feasible and desirable for location in rural regions; in furtherance thereof, to contract with any one (1) or more state agencies, other public agencies, or private agencies for the performance by such agencies of any educational or training activity authorized by law or for the providing of any services related thereto; and, in furtherance thereof, to cooperate with and accept funds from the State Board of Education, the State Board of Career Education, or any other state agency or from the United States or any agency thereof;

(8) Engage in economic development planning to promote the harmonious development of the state, encouraging increased employment, increased personal income, and the preservation of the state's natural beauty and environment in cooperation with other state agencies and with local substate planning and development agencies;

(9) Promote the development, retention, expansion, and support of small businesses in Arkansas by providing direct technical assistance services and by coordination of and with the various available assistance programs;

(10) Expand the exportation of the state's agricultural and manufactured products to national and international markets by providing appropriate and effective marketing assistance and support;

(11) Encourage local participation and organization for economic development by providing necessary and appropriate community assistance; and

(12) Take such other action not inconsistent with law as it may deem necessary or desirable to carry out the intent and purpose of this act.

History. Acts 1955, No. 404, § 8; 1971, 65, codified as §§ 15-4-102, 15-4-202 — No. 443, § 1; 1979, No. 65, § 4; A.S.A. 15-4-204, 15-4-206, 15-4-209, 25-11-101, 1947, § 9-511. 25-11-102.

Meaning of "this act". Acts 1979, No.

15-4-210. Overseas operation — Reports.

(a) The Arkansas Economic Development Council, with the approval of the Governor, shall open such foreign offices as are deemed appro-

priate to promote the export and sale of Arkansas products in foreign markets and to develop foreign industry and markets in Arkansas.

(b) The council shall report the progress of these offices annually to the Legislative Council, the Legislative Joint Auditing Committee, and the Governor.

History. Acts 1989 (1st Ex. Sess.), No. 280, § 33; 1995, No. 589, § 1; 1997, No. 540, § 21.

A.C.R.C. Notes. Former section 15-4-210, concerning legislative intent and re-

ports for the overseas program, is deemed to be superseded by this section. The former section was derived from Acts 1975 (Extended Sess., 1976), No. 1015, § 1; A.S.A. 1947, § 9-513.1n.

15-4-211. Overseas program — Personnel.

(a) The Arkansas Economic Development Council is authorized to engage the services of contract employees for the purpose of promoting the development of:

(1) European industry in Arkansas and the export and sale of Arkansas products in Europe;

(2) Asian industry in Arkansas and the export and sale of Arkansas products in Asia; and

(3) Latin American industry in Arkansas and the export and sale of Arkansas products in Latin America.

(b) The combined salaries for all employees shall not exceed the line item appropriation.

History. Acts 1975 (Extended Sess., 1976), No. 1015, § 2; 1983, No. 627, § 1; A.S.A. 1947, § 9-513.1; Acts 1989 (1st Ex. Sess.), No. 280, §§ 31, 37; 1995, No. 589, § 2; 1997, No. 540, § 21.

A.C.R.C. Notes. Acts 2003, No. 1123, § 13, provided: "FOREIGN OFFICE OPERATIONS. The Arkansas Department of Economic Development Office is hereby authorized to enter into contractual arrangements with private and/or public companies, corporations or organizations for the purpose of operating foreign offices. At such time as any of the foreign offices are being operated under such a contractual arrangement, no Overseas Program personnel as authorized by Arkansas Code 15-4-211 shall be employed concurrently with a contractual arrangement with a company, corporation or organization. Arkansas Code 15-4-211 shall not be deemed restrictive in its language so as to preclude the use of standard

Professional Services Contracts for the operation of the foreign offices and/or payment of such contracts. The provisions of this section shall be in effect only from July 1, 2003 through June 30, 2005."

Acts 2007, No. 1224, § 23, provided: "The Arkansas Department of Economic Development (ADED) shall structure its annual update to the Five Year Consolidated Plan and the new Five Year Consolidated Plan to reflect the legislative intent for a priority to be placed on the use of Community Development Block Grant (CDBG) funds for Multi-use facilities that will offer combined facilities for programs commonly offered in separate facilities such as senior centers, public health centers, childcare centers and community centers. ADED shall report the methodology for complying with this priority to the Legislative Council. The provisions of this section shall be in effect only from July 1, 2007 through June 30, 2009."

15-4-212. Sale of property.

(a) The Arkansas Economic Development Council is empowered to sell, for cash, and upon compliance with the provisions of this act, all that property transferred to it under the provisions of this act.

(b) The council, through its chair and the Director of the Arkansas Economic Development Commission, shall certify to the Governor, in duplicate, its proposal for any such sale. The Governor, if he or she approves the proposal, shall endorse his or her approval upon both copies of the certificate and return one (1) copy thereof to the director, and he or she shall at the same time appoint a committee of appraisers to appraise the property, with notice thereof to the director. He or she may similarly fill any vacancy occurring on the committee.

(c) The committee shall consist of five (5) persons, each of whom is the owner of real property within the state. Before entering upon his or her respective duties, each member of the committee shall make and subscribe, in duplicate, an affidavit that he or she is not in any manner interested, either directly or indirectly, either in the sale or in the purchase of the property and that he or she will well and truly, according to the best of his or her ability, view and appraise the property.

(d) The members of the committee may receive expense reimbursement in accordance with § 25-16-901 et seq.

(e) After each member of the committee has made his or her appraisal of the property, he or she shall append to each copy of his or her affidavit a statement of his or her appraisal over his or her signature. He or she shall deliver both copies of the affidavit, with the statement appended thereto, to the Governor. The Governor, if he or she continues to approve the proposed sale of the property, as so appraised, shall endorse his or her approval upon both copies of the affidavit and statement. He or she shall transmit one (1) copy to the director.

(f) Thereupon, the director shall give notice on behalf of the council of the terms of sale by publication in one (1) newspaper regularly published in Little Rock and having a general circulation in the State of Arkansas, by four (4) weekly insertions therein. The notice shall specify a time and place for the receipt by the council of sealed bids for the purchase of the property. The specified time shall be not less than thirty (30) days from and after the date of the first insertion.

(g) Each bid shall be accompanied by a bank officer's check, payable to the order of the council, in an amount equal to one-tenth (1/10) of the bid. The proceeds of the check of the successful bidder, if he or she makes the balance of his or her bid good, shall be credited upon his or her bid. If he or she fails to make the balance good, the proceeds shall be retained by the council as liquidated damages on account of such a failure. The check of each unsuccessful bidder shall be returned to him or her upon the final acceptance of the successful bid.

(h) The council, at the time and place specified in the notice, subject to its adjournment by announcement then and there to some other time

or place, shall open the bids which shall have been received. The council shall proceed to accept that bid which, in its best judgment, shall tend most to the industrial development of the state. No such sale, however, shall be had otherwise than for cash, nor for less than the amount of the appraisal. Provided further, no such bid shall be accepted unless and until approved by the Governor.

(i)(1) Upon receipt from the successful bidder of the full amount of his or her bid, the council, acting through the chair and the director, shall execute and deliver its deed conveying the property to the purchaser and shall certify a copy of the deed to the Governor. The deed shall recite in detail the compliance with the respective provisions of this act. The recital shall be prima facie evidence of the facts so set forth.

(2) The deed need not be acknowledged to entitle it to record. The effect of the deed, the provisions of this act having been substantially complied with in the sale, shall be to vest the purchaser with all of the right, title, and interest of the council and of the State of Arkansas, at law and in equity, in and to the property.

(j) The proceeds of the sale, including any liquidated damages as provided in subsection (g) of this section, upon receipt thereof, shall be deposited in the Arkansas Industrial Development Revolving Fund [INACTIVE], which is created and established in the State Treasury.

History. Acts 1955, No. 404, § 12; **Meaning of "this act".** See note to A.S.A. 1947, § 9-515; Acts 1997, No. 250, § 15-4-204. § 96; 1997, No. 540, §§ 67, 68.

15-4-213. Rural development generally.

The Arkansas Economic Development Council shall act as coordinator with other state agencies in forming advisory teams to work with communities in the development of business, industry, and agriculture in the rural areas of the state.

History. Acts 1987, No. 1069, § 1; **Cross References.** Division of Agricultural Development, § 15-5-801 et seq. 1997, No. 540, § 22.

15-4-214. Interagency contracts.

The Arkansas Economic Development Council is authorized to enter into interagency contracts in order to promote underdeveloped areas of the state, especially those areas with high unemployment.

History. Acts 1993, No. 1172, § 41; **Publisher's Notes.** Former § 15-4-214, concerning the Division of Agriculture Development, was repealed by Acts 1997, No. 540, § 22. 1989, No. 885, § 1. The section was derived from Acts 1985, No. 1005, § 1. For present law, see § 15-5-802.

15-4-215. [Repealed.]

Publisher's Notes. This section, concerning foreign office operations, was repealed by Acts 1999, No. 1412, § 31. The

section was derived from Acts 1997, No. 419, § 32. For present law, see note to § 15-4-211.

15-4-216, 15-4-217. [Repealed.]

Publisher's Notes. These sections, concerning the Division of Agriculture Development, were repealed by Acts 1989, No. 885, § 1. The sections were derived from the following sources:

15-4-216. Acts 1985, No. 1005, § 4.

15-4-217. Acts 1985, No. 1005, § 5.

For present law, see § 15-5-804.

15-4-218. Access to industrial sites.

(a) The Arkansas Economic Development Council is authorized to investigate and study the necessity and desirability of constructing or reconstructing any transportation access to an industrial site located in a publicly owned industrial park.

(b)(1) Based upon such study, the council may enter into agreements with the Arkansas State Highway and Transportation Department or other governmental entities for the construction or reconstruction of transportation accesses to industrial sites.

(2) Such agreements may include provisions for preliminary engineering by the department and the letting of bids for such projects.

History. Acts 1995, No. 418, § 3; 1997, No. 540, § 23.

A.C.R.C. Notes. Acts 2007, No. 1487 § 2, provided:

"The funds appropriated in Section 1 of this act may be used for the following purposes:

"(a) To supplement other monies available to counties and cities in order to provide up to seventy-five (75%) of the matching funds required by the Arkansas Highway and Transportation Department for roads to industrial sites; and

"(b) to provide up to seventy-five percent (75%) of the cost of transportation access costs to publicly owned industrial parks which are not under the existing program of the Arkansas Highway and Transportation Department. The remaining twenty-five (25%) of the costs of the project may be cash or in-kind from the

local government as directed by the Department of Economic Development."

Acts 2007, No. 1487 § 3, provided:

"The Department of Economic Development is authorized to investigate and study the necessity and desirability of constructing or reconstructing any transportation access to an industrial site located in a publicly owned industrial park. Based upon such study, the Department of Economic Development may enter into agreements with the Arkansas Highway and Transportation Department or other governmental entities for the construction or reconstruction of transportation accesses to industrial sites. Such agreements may include provisions for preliminary engineering by the Arkansas Highway and Transportation Department and letting the bids for such projects."

15-4-219. Annual report.

The Arkansas Economic Development Council shall present a report annually on the Arkansas Economic Development Council's work during the previous calendar year, in these areas of concern:

(1) An accounting of:

- (A) All projects completed the previous calendar year, including:
 - (i) The number of jobs created by each project and average hourly wages or annual salaries for each project;
 - (ii) The location of each project; and
 - (iii) What elements of the council's incentive packages were used;
- (B) All projects offered but not opened, including:
 - (i) An assessment of the reasons why offered projects failed to open; and
 - (ii) Proposals the General Assembly should consider that would have assisted the council in its negotiations;
- (C) All factories and plants closed, including:
 - (i) The number of jobs lost;
 - (ii) The location of each factory or plant closed; and
 - (iii) An assessment of the reasons for each factory or plant closing;
 and
- (D) The council's strategies and recommendations for the coming year, including:
 - (i) An assessment of the relative risk of loss of factories, plants, and jobs in the state; and
 - (ii) Plans for:
 - (a) Preventing future closings of factories and plants;
 - (b) Preventing future losses of jobs;
 - (c) Increasing the number of economic development proposals within the state;
 - (d) Drawing an increasing number of economic development proposals into the state; and
 - (e) Creating new incentives for economic development proposals; and
- (2) The director's assessment of the council's performance, including a comparison to:
 - (A) The council's performance over the past two (2) years;
 - (B) The council's own projections; and
 - (C) Economic development in neighboring states.

History. Acts 2001, No. 1282, § 2; 2005, No. 1962, § 56.

A.C.R.C. Notes. Acts 2001, No. 1282, § 1, provided: "The General Assembly finds:

"(1) That knowledge of the state's economy plays a central role in the legislative process;

"(2) That the members of the General Assembly require a comprehensive understanding of the present health and the potential for economic growth of this state in order to effectively represent the people;

"(3) That the members of the General Assembly require a comprehensive understanding of the economic position of this

state in relation to our neighbor states in order to effectively represent the people; and

"(4) That understanding the state of the state's economy requires that the members of the General Assembly receive regular, comprehensive reports of the programs, goals, and strategies of the Department of Economic Development."

As enacted by Acts 2001, No. 1282, § 2, this section began: "Beginning with the May 2002 meeting of the Legislative Council, and annually thereafter."

Amendments. The 2005 amendment substituted "the department's" for "our" in (1)(A)(iii).

15-4-220. Audit of economic incentive programs.

(a) In order to provide information to the General Assembly regarding the benefits of certain economic incentive programs, the Division of Legislative Audit shall prepare a cost-benefit analysis of the incentive programs provided under the Consolidated Incentive Act of 2003, § 15-4-2701 et seq.

(b) The analysis may include, but not be limited to:

(1) The dollar amount of incentives actually provided;
(2) The direct and indirect state and local benefits associated with each program; and

(3) The safeguards to protect noneconomic influences in the award of incentives.

(c)(1) The analysis may be conducted annually on a rotating basis so that each incentive program provided under the Consolidated Incentive Act of 2003, § 15-4-2701 et seq., is evaluated at least one (1) time every five (5) years.

(2) Should the division's staff be insufficient to conduct the scheduled analysis in a given year, the executive committee of the Legislative Joint Auditing Committee may establish the priority and number of programs that can be reasonably analyzed with available resources for a particular year.

(d)(1) All records, data, and other information from whatever source that the Legislative Auditor deems necessary in the examination of the incentive programs shall be made available to the division.

(2) However, nothing in this subsection authorizes or permits publication of information protected from publication by law.

(3) Records and information exempt from public disclosure shall remain exempt in the custody of the division.

History. Acts 2005, No. 1769, § 1.

SUBCHAPTER 3 — MINORITY BUSINESS ECONOMIC DEVELOPMENT ACT

SECTION.

- 15-4-301. Title.
- 15-4-302. Purpose.
- 15-4-303. Definitions.
- 15-4-304. Creation.
- 15-4-305. Administrator.
- 15-4-306. Duties.
- 15-4-307. Minority Business Advisory Council.
- 15-4-308. Administration.
- 15-4-309. Exempt contracts.

SECTION.

- 15-4-310. Minority business officer.
- 15-4-311. Annual minority purchasing plan.
- 15-4-312. State agencies to submit reports.
- 15-4-313. Accelerated payments.
- 15-4-314. Minority business enterprises certification process.
- 15-4-315 — 15-4-320. [Repealed.]

A.C.R.C. Notes. References to "this subchapter" in §§ 15-4-301 — 15-4-305 may not apply to §§ 15-4-311 — 15-4-314 which were enacted subsequently.

Cross References. Arkansas Economic Development Commission, § 25-11-101.

Effective Dates. Acts 1979, No. 1060,

§ 13: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1979 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Ses-

sion, the delay in the effective date of this Act beyond July 1, 1979 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1979."

Acts 1983, No. 644, § 3: July 1, 1983.

15-4-301. Title.

This subchapter shall be known and may be cited as the "Minority Business Economic Development Act".

History. Acts 1977, No. 544, § 2; A.S.A. 1947, § 5-916.3; Acts 1997, No. 540, § 69; 2009, No. 1222, § 1.

Amendments. The 2009 amendment rewrote the section.

15-4-302. Purpose.

(a) The General Assembly finds that it is the policy of the State of Arkansas to support equal opportunity as well as economic development in every sector.

(b) The General Assembly recognizes that it is the purpose of this subchapter to support to the fullest all possible participation of firms owned and controlled by minority persons in state-funded and state-directed public construction programs and in the purchase of goods and services for the state.

(c) All state agencies shall attempt to ensure that ten percent (10%) of the total amount expended in state-funded and state-directed public construction programs and in the purchase of goods and services for the state each fiscal year is paid to minority businesses.

History. Acts 1977, No. 544, § 1; 1979, No. 1060, § 9; 1983, No. 644, § 1; A.S.A. 1947, §§ 5-916.2, 5-916.2a, 5-916.2a note; Acts 1997, No. 540, §§ 24, 70; 2009, No. 1222, § 2.

Publisher's Notes. Acts 1977, No. 544 created the Division of Minority Business Enterprise within the Department of Commerce, and Acts 1979, No. 1060, § 9, transferred the division to the Department of Economic Development. Acts

1981, No. 41, § 7, abolished the Department of Economic Development and transferred its powers, duties, and functions to the Department of Industrial Development. Acts 1983, No. 691, § 16, provided that the division should continue to function within the Department of Industrial Development as provided by law.

Amendments. The 2009 amendment rewrote the section.

15-4-303. Definitions.

As used in this subchapter:

(1)(A) "Exempt" means goods and services classified as exempt for the purpose of administering this subchapter.

(B) The classification shall be determined by the Office of State Procurement of the Department of Finance and Administration and the Division of Minority Business Enterprise of the Arkansas Economic Development Commission and submitted to the Arkansas Economic Development Council for its review and consideration for the purposes of this subchapter;

(2) "Minority" means a lawful permanent resident of this state who is:

- (A) African American;
- (B) Hispanic American;
- (C) American Indian;
- (D) Asian American; or
- (E) Pacific Islander American;

(3) "Minority business enterprise" means a business that is at least fifty-one percent (51%) owned by one (1) or more minority persons as defined in this section;

(4) "Minority business officer" means the individual within each state agency with the responsibility for carrying out the intended purposes of this subchapter;

(5)(A) "Nonexempt" means goods and services classified as nonexempt for the purpose of administering this subchapter.

(B) The classification shall be determined by the office and the division and submitted to the council for its review and consideration for the purposes of this subchapter;

(6) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services;

(7) "State agency" means a department, an office, a board, a commission, or an institution of this state, including a state-supported institution of higher education; and

(8) "State contract" means a state agreement, regardless of what it may be called, for the purchase of commodities and services and for the disposal of surplus commodities and services not otherwise exempt.

History. Acts 1977, No. 544, § 5; A.S.A. 1947, § 5-916.6; Acts 2003, No. 1814, § 2; 2009, No. 1222, § 3.

Amendments. The 2009 amendment rewrote the section.

15-4-304. Creation.

The Division of Minority Business Enterprise of the Arkansas Economic Development Commission:

(1) Is established and confirmed within the commission under the jurisdiction of the Arkansas Economic Development Council;

(2) Shall be operated as a division within the commission; and

(3) Shall perform the functions and duties as provided in this subchapter.

History. Acts 1977, No. 544, § 3; A.S.A. 1947, § 5-916.4; Acts 2009, No. 1222, § 4.

Amendments. The 2009 amendment rewrote the section.

15-4-305. Administrator.

The head of the Division of Minority Business Enterprise of the Arkansas Economic Development Commission is the Administrator of the Division of Minority Business Enterprise of the Arkansas Economic Development Commission and shall be appointed by the Governor.

History. Acts 1977, No. 544, § 4; A.S.A. 1947, § 5-916.5; Acts 2009, No. 1222, § 5. **Amendments.** The 2009 amendment rewrote the section.

15-4-306. Duties.

The Division of Minority Business Enterprise of the Arkansas Economic Development Commission shall:

(1) Provide technical, managerial, and counseling services and assistance to minority business enterprises;

(2) With the participation of other state departments and agencies as appropriate:

(A) Develop comprehensive plans and specific program goals for a minority business enterprise program;

(B) Establish regular performance monitoring and reporting systems to assure that goals are being achieved; and

(C) Evaluate the impact of federal and state support in achieving the objectives established by the commission;

(3) Implement state policy in support of minority business enterprise development and coordinate the plans, programs, and operations of state government that affect or may contribute to the establishment, preservation, and strengthening of minority business enterprises;

(4) Coordinate, make application for, and administer federal funding grants from the Minority Business Development Agency of the United States Department of Commerce and other federal agencies where applicable;

(5) Promote the mobilization of activities and resources of state agencies and local governments, business and trade associations, universities, foundations, professional organizations, and volunteer and other groups toward the growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of other state departments and agencies;

(6) Establish a center for the development, collection, and dissemination of information that will be helpful to persons and organizations throughout the state in undertaking or promoting the establishment and successful operation of minority business enterprises;

(7) Conduct coordinated reviews of all proposed state training and technical assistance activities in direct support of the minority business enterprise program to ensure consistency with program goals and to preclude duplication of effort of other state agencies with overlapping jurisdictions;

(8) Recommend appropriate legislative or executive actions to enhance minority business opportunities in this state;

(9) Assist minority businesses in obtaining governmental or commercial financing for business expansion, establishment of new businesses, or industrial development projects;

(10) Provide services to promote the organization of local development corporations for rural development and assist minority business persons in agrarian endeavors;

(11) Assist minority businesses to promote reciprocal foreign trade and investment;

(12) Assist minority business persons in business contract procurement from governmental and private commercial sources; and

(13) Provide a program effort to ensure participation of veterans in Arkansas minority business enterprise activities.

History. Acts 2009, No. 1222, § 6.

15-4-307. Minority Business Advisory Council.

(a) The Division of Minority Business Enterprise of the Arkansas Economic Development Commission shall be represented by a state-wide Minority Business Advisory Council and shall report to that council.

(b)(1) The council shall consist of seven (7) members.

(2) The council shall:

(A) Monitor progress, make recommendations, and develop strategic plans for performance improvement; and

(B) Report to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

(c)(1) The Governor shall appoint three (3) members of the council with the advice and consent of the Senate.

(2) The President Pro Tempore of the Senate shall appoint two (2) members of the council.

(3) The Speaker of the House of Representatives shall appoint two (2) members of the council.

(4) Appointments shall reflect and be representative of the minority business community, resource organizations, entrepreneurs, corporations, and other minority business advocates.

(d) Except as otherwise provided by law, members of the council shall serve without compensation.

(e) The term of office of the council shall be at the pleasure of the appointing officer.

(f) There is established a formal relationship between the council and the Administrator of the Division of Minority Business Enterprise of the Arkansas Economic Development Commission.

(g)(1) The administrator and the small disadvantaged business officer shall be the liaison to the council and shall be responsible for submitting to the council any reports and documents under the provisions of this section.

(2) Their duties in relation to this section shall be considered official duty in the conduct of state business.

(h) The council's duties and responsibilities shall be to:

- (1) Review reports and interpret each agency's achievement of its goals;
 - (2) Advise the Governor when an agency has not reached its goals;
 - (3) Make annual reports to the Governor;
 - (4) Recommend to the state agency, the division, and the Office of State Procurement of the Department of Finance and Administration corrective actions to strengthen minority business opportunities in the state; and
 - (5) Conduct public hearings when necessary to obtain public input and support for the purpose of carrying out the provisions of this subchapter.
- (i) Each state agency, through its minority business officer, shall submit to the division, the council, and the office the agency's plan to reach its goals for the coming fiscal year and shall:
- (1) Be submitted to the division by June 30 of each year;
 - (2) Contain the name of the state agency submitting the plan;
 - (3) Contain a policy statement signed by the agency head expressing a commitment to use minority businesses in all aspects of contracting to the maximum extent feasible;
 - (4) Identify the name of the minority business officer in the agency who is responsible for developing and administering the compliance plan;
 - (5) Establish a timetable for the agency to reach its goals under the plan and the manner in which the agency intends to reach its goals; and
 - (6) Contain any other procedures the division deems necessary to comply with the goals and the compliance plan.

History. Acts 2009, No. 1222, § 6.

15-4-308. Administration.

(a) The Division of Minority Business Enterprise of the Arkansas Economic Development Commission and the Office of State Procurement of the Department of Finance and Administration shall serve as the principal coordinators of the initiative to ensure the successful implementation of this subchapter.

(b) The division and the office shall provide assistance to minority businesses seeking contract opportunities with various state agencies.

(c) The division and the office shall maintain a directory of all minority business officers for each state agency.

(d) The division and the office shall provide management and technical assistance to any state agency that experiences difficulty in complying with the provisions of this subchapter.

(e) The division and the office shall maintain a current directory of minority businesses and shall make the directory available to each state agency and minority business officer.

(f) The division shall serve as a central clearinghouse for information on state contracts, including a record of all pending state contracts upon which minority businesses may participate.

History. Acts 2009, No. 1222, § 6.

15-4-309. Exempt contracts.

Upon the approval of the Minority Business Advisory Council, the Division of Minority Business Enterprise of the Arkansas Economic Development Commission and the Office of State Procurement of the Department of Finance and Administration shall determine the classifications of contracts to be exempted from the goals established by this subchapter whenever there exists an insufficient number of minority businesses to ensure adequate competition.

History. Acts 2009, No. 1222, § 6.

15-4-310. Minority business officer.

(a) Each state agency shall designate an individual as its minority business officer.

(b) The minority business officer shall be the person within the agency with whom the Division of Minority Business Enterprise of the Arkansas Economic Development Commission and the Minority Business Advisory Council shall work in their efforts to accomplish the goals of this subchapter.

(c) Upon the appointment of the minority business officer in each state agency, the agency shall notify the division and the Office of State Procurement of the Department of Finance and Administration.

History. Acts 2009, No. 1222, § 6.

15-4-311. Annual minority purchasing plan.

(a) Prior to June 30 each year, each state agency shall submit to the Division of Minority Business Enterprise of the Arkansas Economic Development Commission and the Office of State Procurement of the Department of Finance and Administration a minority purchasing plan that shall outline the agency's plan to reach its goals for the coming fiscal year.

(b) The minority purchasing plan shall include without limitation:

(1) The name of the state agency;

(2) A policy statement signed by the agency head expressing a commitment to use minority business in all aspects of contracting to the maximum extent feasible;

(3) The name of the minority business officer in the agency who is responsible for developing and administering the compliance plan;

(4) The time table for the agency to reach its goals under the plan and the manner in which the agency intends to reach its goals; and

(5) Any other procedures the agency deems necessary to comply with the goals and the compliance plan.

History. Acts 1991, No. 698, § 1; 2007, No. 692, § 1; 2009, No. 1222, § 7.

A.C.R.C. Notes. Acts 1991, No. 698, § 4, provided: “(a) Within ninety (90) days from effective date of this Act, each state agency shall submit to the Division, the council and the Office of State Purchasing a minority purchasing plan which shall outline the agency’s plan to reach its goals for the current fiscal year.

“(b) The Minority Purchasing plan shall include but not be limited to:

“(1) The name of the state agency;

“(2) A policy statement signed by the agency head expressing a commitment to use minority businesses in all aspects of contracting to the maximum extent feasible;

“(3) The name of the coordinator or procurement officer in the agency who is

responsible for developing and administering the compliance plan;

“(4) The time table for the agency to reach its goals under the plan and the manner in which the agency intends to reach its goals; and

“(5) Any other procedures the agency deems necessary to comply with the goals and the compliance plan.”

References to “this subchapter” in §§ 15-4-301 — 15-4-305 may not apply to this section which was enacted subsequently.

Amendments. The 2007 amendment substituted “§§ 15-4-312 — 15-4-320” for “§§ 15-4-312 — 15-4-319.”

The 2009 amendment rewrote the section.

15-4-312. State agencies to submit reports.

The Minority Business Advisory Council shall require each state agency to produce within fifteen (15) days of the close of each three-month period a report summing up total procurement for all contracts, except exempt contracts of the agency, and the dollar value and the percentage of the contracts of the agency awarded to minority businesses.

History. Acts 1991, No. 698, § 2; 2009, No. 1222, § 8.

A.C.R.C. Notes. Concerning the submission of a minority purchasing plan by each state agency, see A.C.R.C. Notes to § 15-4-311.

References to “this subchapter” in §§ 15-4-301 — 15-4-305 may not apply to this section which was enacted subsequently.

Amendments. The 2009 amendment rewrote the section.

15-4-313. Accelerated payments.

To ensure that minority businesses are not financially hindered due to delays in payment by state agencies entering into contracts with minority businesses under this subchapter, state agencies shall accelerate payment to minority vendors to preclude accounts receivable problems of minority businesses caused by the State of Arkansas.

History. Acts 1991, No. 698, § 3; 1995, No. 1296, § 48; 1997, No. 540, § 25; 2003, No. 487, § 12; 2007, No. 692, § 2; 2009, No. 481, § 1; 2009, No. 1222, § 9.

A.C.R.C. Notes. Concerning the sub-

mission of a minority purchasing plan by each state agency, see A.C.R.C. Notes to § 15-4-311.

References to “this subchapter” in §§ 15-4-301 — 15-4-305 may not apply to

this section which was enacted subsequently.

Acts 2007, No. 1602, § 1, provided: “(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses

of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

Amendments. The 2007 amendment, in (5), added “a lawful permanent resident of this state who is” and deleted former (5)(A) and redesignated the remaining subdivisions accordingly; and added (6) and redesignated the remaining subsections accordingly.

The 2009 amendment by No. 481 substituted “A Native American” for “An American Indian” in (5)(C); substituted “An Asian American” for “An Asian Pacific Islander” in (5)(D); inserted (5)(E); and made related changes.

The 2009 amendment by No. 1222 rewrote the section.

15-4-314. Minority business enterprises certification process.

(a) The Division of Minority Business Enterprise of the Arkansas Economic Development Commission shall promulgate rules to create a certification process for minority business enterprises.

(b) The certification process shall include without limitation:

(1) Criteria for certification that shall include without limitation:

(A) A determination that the business is structured as a minority business enterprise;

(B) Verification of minority ownership and control of the business; and

(C) Annual updates indicating continuing minority ownership and control;

(2) A formal application process;

(3) An education program to assist minority business enterprises in achieving certification; and

(4) An outreach to ensure the broadest possible participation of minority business enterprises and persons proposing new minority business enterprises.

(c) The Office of State Procurement of the Department of Finance and Administration shall cooperate with the division to the fullest extent possible in sharing information concerning certification and registration of minority business enterprises carrying out the purposes of this section.

History. Acts 1991, No. 698, § 6; 2009, No. 1222, § 10.

A.C.R.C. Notes. Concerning the submission of a minority purchasing plan by each state agency, see A.C.R.C. Notes to § 15-4-311.

References to “this subchapter” in §§ 15-4-301 — 15-4-305 may not apply to this section which was enacted subsequently.

Amendments. The 2009 amendment rewrote the section.

15-4-315 — 15-4-320. [Repealed.]

Publisher’s Notes. These sections, concerning administration, exempt contracts, minority business officer, state agencies to submit reports, accelerated payments, and minority business enterprises certification process, were repealed by Acts 2009, No. 1222, § 11. They were derived from the following sources:

15-4-315. Acts 1991, No. 698, § 7; 1995, No. 1296, § 48.

15-4-316. Acts 1991, No. 698, § 9; 1995, No. 1296, § 48.

15-4-317. Acts 1991, No. 698, § 5.

15-4-318. Acts 1991, No. 698, § 4.

15-4-319. Acts 1991, No. 698, § 8.

15-4-320. Acts 2003, No. 1456, § 1.

SUBCHAPTER 4 — JOBS CREATION BY STIMULATING SMALL BUSINESS GROWTH ACT OF 1985

SECTION.

15-4-401. Title.

15-4-402. Legislative findings and purpose.

15-4-403. Definitions.

15-4-404. Promulgation of rules and regulations generally.

15-4-405. Companies qualified for loan application and sale — Apportioning available funds.

15-4-406. Authority to issue revenue bonds — Loan funds.

15-4-407. Limits on bond issuance and loan purchases.

SECTION.

15-4-408. Prerequisites to issuance.

15-4-409. Authorizing resolution and trust indenture.

15-4-410. Issuance and redemption procedures.

15-4-411. Security.

15-4-412. Expenses.

15-4-413. Tax exemption.

15-4-414. No personal liability.

15-4-415. Authority to use bond proceeds.

15-4-416. Deposit and use of revenues.

15-4-401. Title.

This subchapter shall be known and may be cited as the “Jobs Creation by Stimulating Small Business Growth Act of 1985”.

History. Acts 1985, No. 869, § 2; A.S.A. 1947, § 9-570.

15-4-402. Legislative findings and purpose.

The General Assembly finds that:

(1) It would be in the best interest of the population of the State of Arkansas to promote the growth and development of small business concerns and concerns owned and controlled by socially and economically disadvantaged individuals, to the extent provided in this subchapter, by:

(A) Stimulating the flow of private capital and long-term loan funds these concerns need for the sound financing of capital improve-

ments for their business operations and for growth, expansion, and modernization; and

(B) Providing incentives as appropriate for the increase of business volume these concerns need to become competitive; and

(2) The State of Arkansas' primary concern is to encourage the creation of more jobs for the population in a segment in which the ratio of new jobs per dollar invested is maximized.

History. Acts 1985, No. 869, § 1; A.S.A. 1947, § 9-569.

15-4-403. Definitions.

As used in this subchapter:

(1) "Council" means the Arkansas Economic Development Council;

(2) "Division" means the Division of Minority Business Enterprise within the Arkansas Economic Development Commission;

(3) "Small business concern" means small business firms in this state owned and operated by:

(A) Socially and economically disadvantaged individuals who are qualified to receive federally secured loans through small business investment companies licensed by the Small Business Administration; and

(B) Small business firms owned and operated by persons of limited financial means; and

(4) "Small business investment company" means a small business investment company organized and chartered under the business corporation or nonprofit corporation statutes of this state or formed as a limited partnership for the purpose of making investment loans for capital improvements and expansion to persons whose participation in the free enterprise system is hampered because of social or economic disadvantages, as authorized in 15 U.S.C. § 681(d) [repealed], or because of limited financial means.

History. Acts 1985, No. 869, § 3; A.S.A. 1947, § 9-571; Acts 1997, No. 540, §§ 26, 71.

Cross References. Arkansas Business Corporation Act, § 4-26-101 et seq. Arkansas Nonprofit Corporation Act, § 4-28-201 et seq. Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.

15-4-404. Promulgation of rules and regulations generally.

The Arkansas Economic Development Council shall promulgate rules, regulations, and procedures to be followed by the Division of Minority Business Enterprise of the Arkansas Economic Development Commission:

(1) In administering the provisions of this subchapter; and

(2) In the making of loans to small business investment companies or in the purchase from the companies of loans made to small business concerns in compliance with the provisions of this subchapter.

History. Acts 1985, No. 869, § 10; A.S.A. 1947, § 9-578; Acts 1997, No. 540, § 72.

15-4-405. Companies qualified for loan application and sale — Apportioning available funds.

(a) Any small business investment company which qualifies and is licensed by the Small Business Administration as a small business investment company authorized to do business in this state and to make loans and provide investment funds for capital improvements to persons whose participation in the free enterprise system is hampered because of social or economic disadvantage shall be entitled to apply with the Division of Minority Business Enterprise of the Arkansas Economic Development Commission for loans under the provisions of this subchapter and may sell to the division loans made to small business concerns eligible to receive the loans under the provisions of this subchapter.

(b) If applications for loans or applications to sell investment loans filed with the division exceed the funds available for such purposes, the Arkansas Economic Development Council shall promulgate appropriate rules and regulations to apportion to each such small business investment company its pro rata share of available loan funds in accordance with guidelines and standards promulgated by the council.

History. Acts 1985, No. 869, § 10;
A.S.A. 1947, § 9-578.

15-4-406. Authority to issue revenue bonds — Loan funds.

To stimulate the flow of private funds for capital improvements to small business concerns, the Arkansas Economic Development Council is authorized to:

(1) Issue revenue bonds to obtain funds to be administered through the Division of Minority Business Enterprise of the Arkansas Economic Development Commission to make investment loans to small business concerns insured by the Small Business Administration of the federal government; and

(2) Provide funds whereby the division may purchase from small business investment companies small business enterprise loans for capital improvements and expansions guaranteed by the Small Business Administration, thereby making available to such small business investment companies additional loan funds.

History. Acts 1985, No. 869, § 4; A.S.A.
1947, § 9-572; Acts 1997, No. 540, § 73.

15-4-407. Limits on bond issuance and loan purchases.

(a) The Arkansas Economic Development Council is authorized and empowered to issue revenue bonds in such amounts as may be determined by the council.

(b) For the purposes of this subchapter, the aggregate amount of revenue bonds to be issued under the provisions of this subchapter shall

not exceed the sum of ten million dollars (\$10,000,000) for the fiscal biennium ending June 30, 1987.

(c) Moneys loaned to small business companies under the provisions of this subchapter shall be used by the companies in making business loans to small business concerns, as defined in this subchapter, in amounts not to exceed an aggregate of one hundred thousand dollars (\$100,000) in such moneys to the same small business concern during any fiscal biennium.

(d) Small business concern loans purchased by the council from qualified small business investment companies shall not exceed an aggregate of one hundred thousand dollars (\$100,000) in loans to any single business firm during any fiscal biennium.

History. Acts 1985, No. 869, §§ 4, 5; A.S.A. 1947, §§ 9-572, 9-573.

Publisher's Notes. Acts 1985, No. 869, § 5 provided that the aggregate outstand-

ing face amounts of revenue bonds issued by the commission, under that act, for the fiscal year ending June 30, 1987, were not to exceed \$10,000,000.

15-4-408. Prerequisites to issuance.

Before the Arkansas Economic Development Council shall issue its revenue bonds, the commission, acting through the Division of Minority Business Enterprise of the Arkansas Economic Development Commission, shall have received from small business investment companies in this state binding commitments to make business loans to small business concerns, as defined in this subchapter, to sell small business loans to the division or to engage in specific small business concern loan activities, as authorized in this subchapter.

History. Acts 1985, No. 869, § 5; A.S.A. 1947, § 9-573.

15-4-409. Authorizing resolution and trust indenture.

(a) Before revenue bonds shall be issued, the Arkansas Economic Development Council shall adopt an authorizing resolution and trust indenture which, together with this subchapter, shall constitute a contract between the council and the holders and registered owners of the bonds.

(b) The contract and all covenants, agreements, and obligations therein shall be promptly performed in strict compliance with the terms and conditions of the contracts, and the covenants, agreements, and obligations of the Arkansas Economic Development Commission shall be enforced by mandamus or other appropriate proceedings at law or in equity.

History. Acts 1985, No. 869, § 6; A.S.A. 1947, § 9-574.

15-4-410. Issuance and redemption procedures.

(a) The bonds to be issued by the Arkansas Economic Development Council shall be issued in accordance with the same procedures provided for the issuance of revenue bonds by the Arkansas Development Finance Authority.

(b) All other provisions of the Arkansas Housing Development Agency Act [repealed] governing the issuance of revenue bonds, the issuance of refunding bonds, and the various formalities and procedures to be followed with respect to the issuance or redemption thereof shall be applicable to revenue bonds to be issued by the council under the provisions of this subchapter.

History. Acts 1985, No. 869, §§ 5, 9; A.S.A. 1947, §§ 9-573, 9-577.

Publisher's Notes. Acts 1985, No. 1062, § 4.01, abolished the Arkansas Housing Development Agency, transferred its functions, powers, and duties to

the Arkansas Development Finance Authority, and provided that any reference to the Arkansas Housing Development Agency should be deemed to refer to the Arkansas Development Finance Authority.

15-4-411. Security.

(a) The principal of, interest on, and trustees' and paying agents' fees in connection with the revenue bonds issued by the Arkansas Economic Development Council under the provisions of this subchapter shall be secured by a lien and pledge of the loans made or the investment loans purchased from the proceeds and collateral security received by the council from small business investment companies.

(b) It shall not be necessary to the provisions of the lien and pledge that the trustees or holders of the revenue bonds take possession of the loan mortgages for collateral security.

History. Acts 1985, No. 869, § 6; A.S.A. 1947, § 9-574.

15-4-412. Expenses.

The Arkansas Economic Development Council may require the small business investment company borrowing money from the commission or selling small business concern investment loans to the commission to pay all or part of the incidental expenses in connection therewith and all or part of the expenses of issuance of the bonds.

History. Acts 1985, No. 869, § 5; A.S.A. 1947, § 9-573.

15-4-413. Tax exemption.

Bonds issued under the provisions of this subchapter and the interest on those bonds shall be exempt from all state, county, and municipal taxes, and the exemption shall include income, inheritance, and estate taxes.

History. Acts 1985, No. 869, § 7; A.S.A. 1947, § 9-575.

15-4-414. No personal liability.

Neither the members of the Arkansas Economic Development Council nor officials or employees of the Arkansas Economic Development Commission or the Division of Minority Business Enterprise of the Arkansas Economic Development Commission executing bonds or notes pursuant to this subchapter shall be liable personally on such bonds or notes by reason of the issuance thereof.

History. Acts 1985, No. 869, § 8; A.S.A. 1947, § 9-576; Acts 1997, No. 540, § 27.

15-4-415. Authority to use bond proceeds.

The Arkansas Economic Development Council, acting through the Division of Minority Business Enterprise of the Arkansas Economic Development Commission, is authorized and empowered to use the proceeds of any bonds issued under this subchapter, together with any other available funds, for the making of loans for:

- (1) The purchase of investment loans and paying of incidental expenses in connection therewith;
- (2) Paying the expenses of amortizing and issuing the bonds;
- (3) Paying interest on the bonds until revenues thereon are available in sufficient amounts; and
- (4) Funding such debt service reserves as the council deems necessary or desirable.

History. Acts 1985, No. 869, § 5; A.S.A. 1947, § 9-573.

15-4-416. Deposit and use of revenues.

(a) All revenues received by the Division of Minority Business Enterprise of the Arkansas Economic Development Commission in behalf of the Arkansas Economic Development Council under the authority of this subchapter, except revenues derived from appropriations, are specifically declared to be cash funds restricted in their use and dedicated and to be used solely as provided in this subchapter.

(b) The pledged revenues shall not be deposited in the State Treasury, but, when received, shall be deposited by the council in the account or accounts and in the depository or depositories specified by resolution of the council and shall be used by the council solely for the purpose of carrying out the provisions of this subchapter and in conformity with the provisions of any resolution or indenture-securing bonds of the council or other agreement entered into by the council pursuant to the provisions of this subchapter.

(c) Any revenues at any time held by the council in excess of the amount necessary to accomplish the purpose for which the revenues

were received and to comply with all covenants and agreements of the agency relating thereto shall be deposited to the credit of the state in such depositories and shall be reported to the Treasurer of State at such time and in such manner as shall be designated and prescribed by the Treasurer of State.

History. Acts 1985, No. 869, § 9; A.S.A. 1947, § 9-577.

SUBCHAPTER 5 — INDUSTRIAL DEVELOPMENT CORPORATIONS

SECTION.

- 15-4-501. Purpose — Incorporators.
- 15-4-502. Articles of incorporation — Contents.
- 15-4-503. Articles — Signatures and acknowledgment of incorporators.
- 15-4-504. [Repealed.]
- 15-4-505. Articles — Filing.
- 15-4-506. Beginning of corporate existence.
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- 15-4-508. Filing corrected articles of incorporation.
- 15-4-509. Corporate powers.
- 15-4-510. Bylaws.
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SECTION.

- 15-4-512. Filing charges.
- 15-4-513. Nonprofit operation — Payment of indebtedness.
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- 15-4-517. Bond issue — Terms.
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- 15-4-519. [Repealed.]
- 15-4-520. Excess funds.
- 15-4-521. Sale of obligations.
- 15-4-522. Refunding obligations.
- 15-4-523. Authorized investors.
- 15-4-524. Tax exemptions.
- 15-4-525. Dissolution.

Effective Dates. Acts 1955, No. 404, § 40: approved Mar. 29, 1955. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the State of Arkansas has had heretofore an inadequate program for the agricultural and industrial development of the state and of its several sections, that on account of such inadequate program the State of Arkansas has been unable to provide for its inhabitants sufficient opportunities in agriculture and industry, that on account thereof the State of Arkansas has suffered great losses of population and a decreasing standard of living for its inhabitants, that unless an adequate program for the agricultural and industrial development of the state be immediately undertaken the State of Arkansas will suffer immediate and irreparable further loss in population and the opportunity for agricultural and industrial expansion, and that only by the passage of this act and giving immediate

effect to its provisions can the State of Arkansas prevent further losses in population and secure to its inhabitants opportunities for agricultural and industrial development. An emergency, therefore, is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall, except as to Sections 11 and 12, hereof, take effect and be in full force from and after its passage."

Acts 1957, No. 47, § 16: approved Feb. 15, 1957. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the State of Arkansas has had heretofore an inadequate program for the agricultural and industrial development of the state and of its several sections, that on account of such inadequate program the State of Arkansas has been unable to provide for its inhabitants sufficient opportunities in agriculture and industry, that on account thereof the State of Arkansas has suffered

a decreasing standard of living for its inhabitants, that unless an adequate program for the agricultural and industrial development of the state be immediately undertaken the State of Arkansas will suffer immediate and irreparable loss in population and the opportunity for agricultural and industrial expansion, and that only by the passage of this act and giving immediate effect to its provisions can the State of Arkansas prevent losses in population and secure to its inhabitants opportunities for agricultural and industrial development. An emergency, therefore, is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage."

Acts 1968 (2nd Ex. Sess.), No. 11, § 6: June 12, 1968. Emergency clause provided: "The General Assembly finding that the industrial development of the State of Arkansas is retarded on account of the lack of adequate financing available to secure and develop new industry within the state and to expand and develop presently existing industries, and that only by

this act can additional financing for the industrial development of the state be made immediately available, an emergency, therefore, is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

15-4-501. Purpose — Incorporators.

In order to encourage and promote the economic, agricultural, and industrial development of any city, town, or county in this state, not fewer than fifteen (15) natural persons of the age of twenty-one (21) or more who are residents of the city, town, or county may act as incorporators of a corporation to be organized under this act by executing articles of incorporation as provided in this act.

History. Acts 1955, No. 404, § 13; 404, codified as §§ 15-4-201 — 15-4-204, A.S.A. 1947, § 9-516; Acts 2001, No. 620, 15-4-206, 15-4-209, 15-4-212, 15-4-501 — § 1. 15-4-525.

Meaning of "this act". Acts 1955, No.

15-4-502. Articles of incorporation — Contents.

(a) The articles of incorporation shall state:

(1) The name of the corporation. The name shall include the name of the city, town, or county and the words "industrial development" or "economic development" and the word "corporation", "incorporated", "inc.", or "company". The name shall be such as to distinguish it from any other corporation organized and existing under the laws of this state;

(2) The purpose for which the corporation is formed;

(3) The names and addresses of the incorporators who shall serve as directors and manage the affairs of the corporation until its first annual meeting of members or until their successors are elected and qualified;

(4) The number of directors, not fewer than three (3), to be elected at the annual meetings of members;

(5) The address of its principal office and the name and address of its agent upon whom process may be served;

(6) The period of duration of the corporation, which may be perpetual;

(7) The terms and conditions upon which persons shall be admitted to membership in the corporation, but if expressly so stated, the determination of such matters may be reserved to the directors by the bylaws; and

(8) Any provisions not inconsistent with law which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the corporation.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this act.

History. Acts 1955, No. 404, § 14; **Meaning of “this act”.** See note to A.S.A. 1947, § 9-517; Acts 2001, No. 620, § 15-4-501.
§ 2.

15-4-503. Articles — Signatures and acknowledgment of incorporators.

The original copy of the articles of incorporation shall be signed by the incorporators and acknowledged before any officer authorized by the laws of this state to acknowledge the execution of deeds and conveyances.

History. Acts 1955, No. 404, § 15;
A.S.A. 1947, § 9-518.

15-4-504. [Repealed.]

Publisher’s Notes. This section, concerning approval of the articles of incorporation by the commission, was repealed by Acts 1997, No. 339, § 1. The section was derived from Acts 1955, No. 404, § 15; A.S.A. 1947, § 9-518.

15-4-505. Articles — Filing.

(a) The original executed articles of incorporation shall be filed in the office of the Secretary of State.

(b) If the Secretary of State finds that the articles of incorporation conform to law, he or she shall, when the fees prescribed by this act have been paid:

(1) Endorse on the original copy the word “FILED”, and the month, day, and year of the filing thereof;

(2) File the original in the office of the Secretary of State; and

(3) Issue a certificate of incorporation to the incorporators.

(c) The incorporators shall file for recording a certified copy of the articles of incorporation in the office of the county clerk in the county in which the principal office of the corporation is located.

History. Acts 1955, No. 404, § 15; **Meaning of “this act”.** See note to A.S.A. 1947, § 9-518; Acts 1997, No. 339, § 15-4-501.
§ 2.

15-4-506. Beginning of corporate existence.

(a) Upon the issuance of a certificate of incorporation by the Secretary of State, the corporate existence of the corporation shall begin.

(b) The certificate of incorporation shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this act.

History. Acts 1955, No. 404, § 16; **Meaning of “this act”.** See note to A.S.A. 1947, § 9-519. § 15-4-501.

15-4-507. Meeting.

(a) After the issuance of the certificate of incorporation, an organization meeting shall be held at the call of a majority of the incorporators for the purpose of adopting bylaws and electing officers and for the transaction of such other business as may properly come before the meeting.

(b) The incorporators calling the meeting shall give at least three (3) days' notice by mail to each incorporator. The notice shall state the time and place of the meeting, but the notice may be waived in writing.

History. Acts 1955, No. 404, § 17; A.S.A. 1947, § 9-520.

15-4-508. Filing corrected articles of incorporation.

(a) In the event any corporation has filed defective articles of incorporation or has failed to do all things necessary to perfect its corporate organization, it may, nevertheless, file corrected articles of incorporation or amend the original articles and do and perform all acts and things necessary in the premises for the correction of such defects.

(b) The action so taken shall be valid and binding upon all persons concerned. The capacity of such a corporation to file corrected articles of incorporation or amendments to the original articles or to do and perform all acts and things necessary in the premises shall not be questioned.

History. Acts 1955, No. 404, § 18; A.S.A. 1947, § 9-521; Acts 1997, No. 339, § 3.

15-4-509. Corporate powers.

Each corporation organized under this act shall have power:

- (1) To sue and be sued, complain, and defend in its corporate name;
- (2) To have perpetual succession, unless a limited period of duration is stated in its articles of incorporation;
- (3) To adopt a corporate seal, which may be altered at pleasure, and to use it, or a facsimile thereof as required by law;
- (4) To encourage and promote the economic, agricultural, and industrial development of its city, town, or county;
- (5) To purchase, receive, lease as lessee or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property, or any interest therein;
- (6) In the manner hereinafter provided, to borrow money and otherwise contract indebtedness, to issue its bonds or other obligations therefor, and to secure the payment thereof by mortgage, pledge, or a deed of trust of all or any part of its property, assets, revenues, or income;
- (7) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets;
- (8) To accept gifts or grants of money, service, or property, real or personal;
- (9) To make any and all contracts necessary or convenient for the exercise of the powers granted in this act;
- (10) To conduct its business and have officers within or without the state;
- (11) To elect or appoint officers, agents, and employees of the corporation and to define their duties and fix their compensation;
- (12) To make and alter bylaws not inconsistent with the articles of incorporation or with the laws of this state for the administration and regulation of the affairs of the corporation; and
- (13) To do and perform any and all acts and things and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the corporation is organized.

History. Acts 1955, No. 404, § 19; **Meaning of "this act".** See note to A.S.A. 1947, § 9-522; Acts 1997, No. 339, § 15-4-501.
§ 4; 2001, No. 620, § 3.

15-4-510. Bylaws.

(a) The power to make, alter, amend, or repeal the bylaws of the corporation shall be vested in the board of directors.

(b) The bylaws may contain any provision for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

History. Acts 1955, No. 404, § 21; A.S.A. 1947, § 9-524; Acts 1997, No. 339, § 5.

15-4-511. Amendments to articles of incorporation.

(a) A corporation organized under this act may amend its articles of incorporation by a majority vote of the members present in person or by proxy at any regular meeting or at any special meeting of its members called for that purpose.

(b) The power to amend shall include the power to accomplish any desired change in the provisions of its articles of incorporation and to include any purpose, power, or provision which would be authorized to be included in original articles of incorporation if executed at the time the amendment is made.

(c) Articles of amendment, signed by the president or vice president and attested by the secretary certifying to such an amendment and its lawful adoption, shall be executed, acknowledged, filed, and recorded as the original articles of incorporation of a corporation organized under this act.

(d) As soon as the Secretary of State has accepted the articles of amendment for filing and issued a certificate of amendment, the amendments shall be in effect.

History. Acts 1955, No. 404, § 23; A.S.A. 1947, § 9-526; Acts 1997, No. 339, § 6.
Meaning of “this act”. See note to § 15-4-501.

15-4-512. Filing charges.

The Secretary of State shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation, ten dollars (\$10.00);

(2) Filing articles of amendment and issuing a certificate of amendment, ten dollars (\$10.00); and

(3) Filing articles of dissolution, one dollar (\$1.00).

History. Acts 1955, No. 404, § 25; 1957, No. 47, § 4; A.S.A. 1947, § 9-528.

15-4-513. Nonprofit operation — Payment of indebtedness.

(a)(1) Each corporation organized under the provisions of this act shall be operated without profit to its members.

(2) All revenues of the corporation derived from lands subject to mortgage or deed of trust given to secure the payment of bonds or other obligations of the corporation shall be devoted:

(A) First to the payment of taxes, insurance, and, in the instance of damage to the mortgaged property of the corporation caused by acts of God, to the extent of the amount in excess of insurance recovery as

shall be required to restore the property to its condition prior to the time of the damage;

(B) Then to the payment of interest on and principal of the bonds or other obligations of the corporation secured by the mortgage or deed of trust as they mature and according to the terms of the mortgage or deed of trust; and

(C) Thereafter to the encouragement and promotion of the economic, agricultural, and industrial development of its city, town, or county.

(b) However, revenues of the corporation may be used also to refund the amounts paid by members of the corporation, as evidenced by its register of membership certificates, and the refunds may be made concurrently with the payment of bonds or other obligations of the corporation.

(c) Notwithstanding the fact that refunds from time to time may be made as provided in subsection (b) of this section, no prior legal right to such revenues of the corporation shall ever attach for the purpose of making refunds on membership certificates so long as any bonds or other obligations of the corporation remain outstanding.

History. Acts 1955, No. 404, § 22; **Meaning of "this act".** See note to 1957, No. 47, § 2; A.S.A. 1947, § 9-525; § 15-4-501. Acts 2001, No. 620, § 4.

15-4-514. Authority to borrow money, issue bonds, etc.

(a) Each corporation organized under this act is authorized to borrow money and to issue negotiable coupon bonds, or notes, or other obligations for the payment thereof from corporate funds to carry out the purposes for which the corporation is organized.

(b) However, no first lien bonds, notes, or other obligations shall be issued by any corporation organized under the provisions of this act for the purpose of purchasing any equipment or other personal property not used in manufacturing or processing operations.

History. Acts 1955, No. 404, § 27; **Meaning of "this act".** See note to 1957, No. 47, § 5; 1968 (2nd Ex. Sess.), § 15-4-501. No. 11, § 2; A.S.A. 1947, § 9-530.

CASE NOTES

Industrial Equipment.

Action of industrial development corporation in issuing bonds for purchase of heavy equipment and boiler for installation in industrial building held not contrary to this section as it existed prior to 1968 amendment since the equipment

and boiler would have become part of the land and building and would not have constituted personal property. *Halbert v. Helena-West Helena Industrial Development Corp.*, 226 Ark. 620, 291 S.W.2d 802 (1956) (decision prior to 1968 amendment).

15-4-515. Exemption from Arkansas Securities Act.

Whenever any corporation organized under this act borrows money, the bonds of the corporation or its other obligations issued to evidence such indebtedness shall be exempt from the provisions of the Arkansas Securities Act, § 23-42-101 et seq.

History. Acts 1955, No. 404, § 26; A.S.A. 1947, § 9-529.

Meaning of "this act". See note to § 15-4-501.

15-4-516. [Repealed.]

A.C.R.C. Notes. The amendment to this section by Acts 1997, No. 540, § 74, is deemed to have been superseded by the repeal of this section by Acts 1997, No. 339, § 7. Acts 1997, No. 540, § 74, substituted the phrase "Department of Economic Development" for "Department of Industrial Development."

Publisher's Notes. This section, concerning the statement required to be presented to the commission prior to borrowing money or issuing bonds, was repealed by Acts 1997, No. 339, § 7. The section was derived from Acts 1955, No. 404, § 30; 1957, No. 47, § 8; A.S.A. 1947, § 9-533; Acts 1997, No. 540, § 74.

15-4-517. Bond issue — Terms.

(a)(1) Bonds, notes, or other obligations issued under the provisions of this act shall be issued by the corporation in such form as its directors may provide and shall be executed by the president and the secretary of the corporation and be sealed with its corporate seal.

(2) In the event any of the officers whose signatures appear on any such obligations shall cease to be officers before the delivery thereof, the signatures shall, nevertheless, be valid and sufficient for all purposes the same as if they had remained in office until delivery.

(3) Signatures to interest coupons attached to any such obligation may be lithographed or engraved.

(b) First lien obligations of the corporation shall bear interest at such rate or rates, payable semiannually, and shall be payable at such times and places not exceeding twenty-five (25) years from their date, as shall be prescribed by the corporation.

History. Acts 1955, No. 404, § 28; 1957, No. 47, § 6; 1968 (2nd Ex. Sess.), No. 11, § 3; 1971, No. 210, § 1; 1981, No. 425, § 49; A.S.A. 1947, § 9-531.

Meaning of "this act". See note to § 15-4-501.

15-4-518. Security for bonds.

(a)(1) Such bonds, notes, or other obligations as may be issued by the corporation may be secured by a mortgage or deed of trust of any of the lands of the corporation and the improvements constructed or proposed to be constructed thereon and machinery and equipment installed or to be installed therein.

(2) However, no corporation shall issue first lien obligations under the provisions of this act in excess of eighty percent (80%) of the

appraised or cost value duly established of such lands, improvements, machinery, and equipment mortgaged to secure payment of the obligations.

(b) Obligations may be secured additionally by a mortgage or deed of trust on any other personal property of the corporation, by a pledge of the revenues of the corporation derived from the properties mortgaged to secure the obligations, and by a pledge of any and all other income of the corporation.

History. Acts 1955, No. 404, § 28; 1957, No. 47, § 6; 1968 (2nd Ex. Sess.), No. 11, § 4; A.S.A. 1947, § 9-531.

Meaning of "this act". See note to § 15-4-501.

15-4-519. [Repealed.]

A.C.R.C. Notes. The amendment to this section by Acts 1997, No. 540, § 75, is deemed to have been superseded by the repeal of this section by Acts 1997, No. 339, § 8. Acts 1997, No. 540, § 75, substituted the phrase "Department of Economic Development" for "Department of Industrial Development."

Publisher's Notes. This section, concerning the validity of bonds or notes and the counter signature of the chairman of the commission, was repealed by Acts 1997, No. 339, § 8. The section was derived from Acts 1955, No. 404, § 28; 1957, No. 47, § 6; A.S.A. 1947, § 9-531; Acts 1997, No. 540, § 75.

15-4-520. Excess funds.

(a) Any funds remaining with the corporation in excess of the amount necessary to finance a project, including the cost of lands, buildings, and facilities and other expenses necessary to its completion, shall be used by the corporation to reduce the amount of its first lien obligations.

(b) For this purpose, the corporation shall call its first lien obligations for payment in inverse numerical order not later than the next interest payment date after completion of the project.

History. Acts 1955, No. 404, § 28; 1957, No. 47, § 6; A.S.A. 1947, § 9-531.

15-4-521. Sale of obligations.

(a) Obligations of the corporation may be sold at public or private sale as the corporation shall determine.

(b)(1) No first lien obligations may be sold for less than par on the basis of interest thereon at the rate of ten percent (10%) per annum.

(2) However, any obligation of the corporation may be sold with the privilege of conversion into obligations bearing a lower rate or rates of interest on such terms that the corporation shall receive no less and pay no more than substantially the same that it would have received and paid had no conversion been effected.

(c) Any conversion of obligations must be approved by the trustee provided in the deed of trust given to secure the payment of the obligations.

(d) No brokerage, agent's fees, or commissions of any kind for securing a purchaser of the bonds shall be allowed.

(e) Obligations may be sold and delivered at one (1) time or in parcels as funds are needed.

(f) The proceeds derived from the sale of obligations of the corporation shall be used exclusively for the purpose for which issued.

History. Acts 1955, No. 404, §§ 31, 32; A.S.A. 1947, §§ 9-534, 9-535; Acts 1997, 1957, No. 47, §§ 9, 10; 1968 (2nd Ex. Sess.), No. 11, § 5; 1971, No. 210, § 2; No. 339, § 9.

15-4-522. Refunding obligations.

(a) Any corporation organized under this act shall have the right to refund its outstanding obligations at any time.

(b) All refunding obligations shall state on their face that they are refunding obligations, and no refunding obligations shall be issued until the debt refunded is cancelled simultaneously with the issue of the refunding obligations, either:

(1) By the surrender of the obligations being refunded; or

(2) If the outstanding obligations are redeemable before maturity and have been called for redemption, by the deposit of the money for their payment on presentation according to the terms of the call, in trust, with the paying agent for the obligations to be refunded; or

(3) By a combination of methods set out in subdivisions (b)(1) and (2) of this section.

History. Acts 1955, No. 404, § 33; 1957, No. 47, § 11; A.S.A. 1947, § 9-536; Acts 1997, No. 339, §§ 10, 11; 1997, No. 540, § 76.

A.C.R.C. Notes. The amendment to former subsection (c) of this section by Acts 1997, No. 540, § 76, is deemed to have been superseded by the repeal of

former subsection (c) by Acts 1997, No. 339, § 11. Acts 1997, No. 540, § 76, in former subsection (c), substituted the phrase "Department of Economic Development" for "Department of Industrial Development."

Meaning of "this act". See note to § 15-4-501.

15-4-523. Authorized investors.

(a) Any city or town in this state or any board, commission, or other authority duly established by ordinance of any such city or town or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any such city or town may invest any of its funds not immediately needed for its purposes in the bonds or other obligations of any industrial or economic development corporation having its principal office in the county in which any such city or town is located.

(b) The board of trustees of any retirement system created by the General Assembly, in its discretion, may invest its funds in first lien coupon bonds of any corporation organized under the provisions of this act.

History. Acts 1955, No. 404, §§ 20, 35; 1957, No. 47, § 1; A.S.A. 1947, §§ 9-523, 9-538; Acts 2001, No. 620, § 5. **Meaning of "this act".** See note to § 15-4-501.

CASE NOTES

Constitutionality.

This section as it existed prior to 1957 amendment was unconstitutional under Ark. Const., Art. 12, § 5, and Ark. Const. Amend. 13, as authorizing municipal corporations to grant financial aid to indus-

trial development corporations. *Halbert v. Helena-West Helena Industrial Development Corp.*, 226 Ark. 620, 291 S.W.2d 802 (1956) (decision prior to 1957 amendment).

15-4-524. Tax exemptions.

Interest on bonds or other obligations issued in accordance with the provisions of this act shall be exempt from all state income taxes and the principal thereof from inheritance taxation.

History. Acts 1955, No. 404, § 36; 1957, No. 47, § 13; A.S.A. 1947, § 9-539. **Meaning of "this act".** See note to § 15-4-501.

CASE NOTES

Constitutionality.

This section as it existed prior to 1957 amendment was unconstitutional under Ark. Const., Art. 16, § 6. *Halbert v. Hel-*

ena-West Helena Industrial Development Corp., 226 Ark. 620, 291 S.W.2d 802 (1956) (decision prior to 1957 amendment).

15-4-525. Dissolution.

(a) Any corporation organized under this act, after the payment in full and cancellation of its bonds and other obligations issued under the provisions of this act or the deposit in trust with the trustee provided in the deed of trust given to secure the payment of all such obligations of a sum of money sufficient for the purpose, may dissolve by a majority vote of the members present in person or by proxy at any regular meeting or at any special meeting of its members called for that purpose.

(b) A certificate of dissolution shall be signed by the president or vice president and attested to by the secretary certifying to the dissolution and stating that they have been authorized to execute and file the certificate by vote cast in person or by proxy by a majority of the members of the corporation.

(c) A certificate of dissolution shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this act.

(d) As soon as the Secretary of State shall have accepted the certificate of dissolution for filing and issued a certificate of dissolution, the corporation shall be deemed to be dissolved.

(e) However, the corporation shall continue for the purpose of paying, satisfying, and discharging any other existing liabilities or obligations, collecting or liquidating its assets, and doing all other acts required to

adjust and wind up its business and affairs, and may sue and be sued in its corporate name.

(f) Any assets remaining after all liabilities or other obligations of the corporation have been satisfied or discharged shall be distributed pro rata among the members of the corporation at the time of the filing of the certificate of dissolution.

(g) Any corporation which purports to have been incorporated under this act but which has not complied with all of the requirements for legal corporate existence and which does not have outstanding and unpaid any bonds or other obligations authorized to be issued under the provisions of this act, nevertheless may file a certificate of dissolution in the same manner as a validly existing corporation.

(h) The certificate of dissolution, in such case, may be authorized by a majority of the incorporators or directors at a meeting called by any incorporator upon ten (10) days' notice mailed to the last known post office address of each incorporator or director and held at the principal office of the corporation named in the articles of incorporation.

History. Acts 1955, No. 404, § 24; 1957, No. 47, § 3; A.S.A. 1947, § 9-527.

Meaning of "this act". See note to § 15-4-501.

SUBCHAPTER 6 — INDUSTRIAL REVENUE BOND GUARANTY LAW

SECTION.

15-4-601. Title.

15-4-602. Definitions.

15-4-603. Arkansas Economic Development Council empowered to grant or deny guaranty bonds.

15-4-604. When bonds may be guaranteed — Standards and regulations for evaluations.

SECTION.

15-4-605. Revenue Bond Guaranty Reserve Account — Investment of funds.

15-4-606. Evidence to support guaranty — Review of applications.

15-4-607. Power to accept grants.

15-4-608. Guaranty agreement provisions.

15-4-609. Regulations.

Cross References. Municipalities and counties industrial development revenue bond law, § 14-164-201 et seq.

Preambles. Acts 1967, No. 173 contained a preamble which read: "Whereas, the people of Arkansas, having recognized the need for a competitive industrial financing program, in 1958 voted approval of Constitutional Amendment No. 49 which empowered counties and municipalities to issue general obligation bonds in connection with the securing and development of industry, debt service of which was limited to five mills of the assessed valuation of real and personal property within the participating units; and

"Whereas, because of the limiting fea-

tures of Amendment 49 and for other purposes the Legislature, in special session January, 1960, expanded Arkansas' industrial financing program by enactment of Act 9 which enabled counties and municipalities also to issue revenue bonds for use in the securing or development of industry; and

"Whereas, the experience of the Arkansas Industrial Development Commission now shows there are many sound industries in the middle range whose financial requirements are too large in many instances for general obligation issues, and too small to be attractive to the revenue bond investing public. Moreover, many counties and towns now have exhausted

all the millage allowed under Amendment 49. As a consequence, it now appears necessary that the Arkansas industrial finance programs be expanded and improved...."

Effective Dates. Acts 1967, No. 173, § 11: approved Feb. 28, 1967. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the State of Arkansas now has inadequate industrial financing programs to encourage and maintain the accelerating industrial development of the state and of its several sections, that on account of such inadequate financial programs the State of Arkansas is now unable to successfully compete for industry with other states, that on account thereof the State of Arkansas henceforth may be expected to have a decelerated industrial development program and thus cause the State of Arkansas to suffer immediate and irreparable economic losses, and that only by passage of this act and immediate effectuation of its provisions can the State of Arkansas prevent substantial economic losses. For these reasons an emergency is hereby declared to exist, and this act which is necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1971, No. 251, § 7: approved Mar. 9, 1971. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the enlarging and strengthening of the Industrial Revenue Bond Guaranty Law provided for herein is essential to the accelerating of industrial development of the state without which the state and its citizens will suffer irrevocable loss, and that only by passage of this act and immediate effectuation of its provisions can such loss be prevented. For these reasons an emergency is hereby declared to exist, and this act which is necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1975 (Extended Sess., 1976), No. 1183, § 3: Feb. 11, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the industrial development program of this state that information filed in support of requests by counties or municipalities for a guaranty

under the Industrial Revenue Bond Guaranty Law be kept confidential in those instances where the guaranty application is rejected or unless the municipality or county is aggrieved by the rejection thereof; that the making of such applications public information in circumstances other than as authorized in this act could do irreparable harm to prospective industries and could jeopardize the obtaining of suitable industries by municipalities or counties who wish to issue industrial development revenue bonds, and that the immediate effectiveness of this act is necessary in order to provide the necessary protection to municipalities and counties and their industrial prospects in those circumstances where a guaranty application is not submitted for approval by the Arkansas Industrial Development Commission after staff or committee review. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1977 (Ex. Sess.), No. 10, § 2: Aug. 15, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the strengthening of the Industrial Revenue Bond Guaranty Law is essential to the acceleration of industrial development in the state; that industrial growth provides additional employment and income to the people of this state thereby increasing the revenues of the state; and that the immediate passage of this act is necessary to increase the limits on the amount of industrial revenue bonds that may be guaranteed thereby giving the Arkansas Industrial Development Commission additional means of stimulating the economic growth of the state. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 115, § 4: Feb. 13, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the strengthening of the Industrial Revenue Bond Guaranty Law is essential to the acceleration of industrial development in the State; that industrial growth provides additional employment

and income to the people of this State thereby increasing the revenues of the State; and that the immediate passage of this Act is necessary to increase the limits on the amount of industrial revenue bonds that may be guaranteed thereby giving the Arkansas Economic Development Commission additional means of stimulating the economic growth of the State. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 259, § 4: Feb. 27, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the strengthening of the State's industrial development revenue bond guaranty program is essential to the acceleration of industrial development in the State, that industrial growth provides additional employment and income to the people of this State, and that the immediate passage of this Act is necessary to strengthen that program, thereby giving the Economic Development Commission of the State of Arkansas additional means of stimulating the economic growth of the State. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 864, § 3: Apr. 4, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the strengthening of the Industrial Revenue Bond Guaranty Law is essential to the acceleration of industrial development in the State; that industrial growth provides additional employment and income to the people of this State thereby increasing the revenues of the State; and that the immediate passage of this Act is necessary to increase the limits on the amount of industrial revenue bonds that may be guaranteed. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 996, § 3: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1183 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987 (1st Ex. Sess.), No. 39, § 8: June 19, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that permitting bonds issued by the Arkansas Development Finance Authority to be guaranteed under the provisions of Act 173 of 1967, as amended, will further encourage the location of industry in Arkansas, thereby significantly assisting in the economic and industrial development of the State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 778, § 8: Mar. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an immediate need to facilitate the guaranty of revenue bonds by the Arkansas Industrial Development Commission for the purpose of securing and developing industry. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-4-601. Title.

This subchapter shall be referred to and may be designated as the “Industrial Revenue Bond Guaranty Law”.

History. Acts 1967, No. 173, § 1; A.S.A. 1947, § 9-559.

15-4-602. Definitions.

As used in this subchapter:

(1) “Act No. 9 bonds” means revenue bonds issued in accordance with the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, § 14-164-201 et seq.;

(2) “ADFA bonds” means revenue bonds and direct loans, including bond anticipation loans, issued by the Arkansas Development Finance Authority in accordance with the Arkansas Development Finance Authority Act, §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316;

(3) “Amortization payments” means periodic, which may be monthly, semiannual, annual, etc., payments of interest, and payments of principal, whether the principal is payable in installments or otherwise, including principal required to be prepaid upon the happening of certain events, as required by an Act No. 9 bond or Arkansas Development Finance Authority indenture or resolution; and

(4) “User” means the lessee or other principal user of the industrial project to be financed, in whole or in part, with the proceeds of Act No. 9 bonds or ADFA bonds.

History. Acts 1967, No. 173, § 2; A.S.A. 1947 § 9-560; Acts 1987 (1st Ex. Sess.), No. 39, § 1; 1997, No. 778, § 1; 2001, No. 1032, § 1.

Publisher’s Notes. Acts 1987 (1st Ex. Sess.), No. 39, § 7, provided that it is the intention of the act to amend such sections

of Acts 1967, No. 173, as amended, as are specifically mentioned in the act and that the remainder of Acts 1967, No. 173 shall remain in full force and effect as enacted until the same shall be further amended or repealed.

15-4-603. Arkansas Economic Development Council empowered to grant or deny guaranty bonds.

The Arkansas Economic Development Council, called the “council”, in addition to all the duties and functions defined in §§ 15-4-101, 15-4-102, 15-4-201 — 15-4-204, 15-4-206, 15-4-209 — 15-4-212, and 15-4-501 — 15-4-525, is empowered to approve or deny by majority vote of the membership of the council the guaranty as provided in this subchapter of amortization payments on Act No. 9 bonds or ADFA bonds, subject to the provisions, restrictions, and conditions set forth in this subchapter.

History. Acts 1967, No. 173, § 2; A.S.A. 1947, § 9-560; Acts 1987 (1st Ex. Sess.), No. 39, § 1; 1997, No. 540, § 28; 1997, No. 778, § 2.

Publisher’s Notes. As to legislative intent of Acts 1987 (1st Ex. Sess.), No. 39, see Publisher’s Note to § 15-4-602.

15-4-604. When bonds may be guaranteed — Standards and regulations for evaluations.

(a) Amortization payments on Act No. 9 bonds and ADFA bonds may be guaranteed in instances when:

(1) Substantial employment is involved;

(2) The total principal amount of all outstanding Act No. 9 bonds and ADFA bonds under guaranty is not in excess of one hundred million dollars (\$100,000,000);

(3) No one (1) issue or series of Act No. 9 bonds or ADFA bonds guaranteed under this section shall exceed five million dollars (\$5,000,000) in principal amount;

(4) The user of the industrial project involved is not permitted to purchase or own at any time any of such bonds; and

(5) The user is found to be financially responsible and the full payment of the interest and principal amount of the bonds may reasonably be expected.

(b) The Arkansas Economic Development Council shall promulgate standards and regulations for the evaluation of the financial condition and business history of users.

History. Acts 1967, No. 173, § 3; 1967, No. 509, § 1; 1969, No. 397, § 3(a); 1971, No. 251, § 1; 1977 (Ex. Sess.), No. 10, § 1; 1979, No. 115, §§ 1, 2; 1981, No. 259, § 1; 1985, No. 864, § 1; A.S.A. 1947, § 9-561;

Acts 1987 (1st Ex. Sess.), No. 39, § 2; 1997, No. 778, § 3; 2001, No. 1032, § 2.

Publisher's Notes. As to legislative intent of Acts 1987 (1st Ex. Sess.), No. 39, see Publisher's Note to § 15-4-602.

15-4-605. Revenue Bond Guaranty Reserve Account — Investment of funds.

(a) The Arkansas Economic Development Council is authorized to:

(1)(A) Establish a Revenue Bond Guaranty Reserve Account, sometimes referred to in this subchapter as the "account", in any Arkansas bank that is a member of the Federal Deposit Insurance Corporation.

(B) Each account shall be in the name of the council, and the amount thereof in excess of that insured by the Federal Deposit Insurance Corporation must be secured by direct obligations of the United States or general obligations of the State of Arkansas or political subdivisions thereof; and

(2)(A) Invest funds in the account in either direct obligations of the United States or certificates of deposit issued by an Arkansas bank or banks.

(B) All moneys received by the council under and pursuant to the provisions of this subchapter shall be deposited as and when received in the account.

(C) It is the intent of this subchapter that idle funds in the account shall be invested in direct obligations of the United States or certificates of deposit issued by an Arkansas bank or banks, as provided in this section, in order that maximum interest return may be received by the account.

(b) All moneys now or hereafter deposited in, or paid to the council for deposit in, the account are specifically declared to be cash funds, received from sources other than taxes, restricted in their use. These moneys shall not be deposited in the State Treasury but shall be deposited in one (1) or more banks, as set forth in subsection (a) of this section.

History. Acts 1967, No. 173, § 4; 1969, No. 397, § 3(b); A.S.A. 1947, § 9-562.

15-4-606. Evidence to support guaranty — Review of applications.

(a)(1)(A) Each county or municipality requesting a guaranty under this subchapter shall submit to the Arkansas Economic Development Council evidence showing conformity with §§ 14-164-201 — 14-164-206 and 14-164-208 — 14-164-224 and such other supporting documents as the council shall require. The application and documentation may be submitted by the user of the industrial project involved.

(B) When a guaranty is requested with respect to Arkansas Development Finance Authority bonds, the Arkansas Development Finance Authority shall submit to the council evidence showing conformity with §§ 15-5-101 — 15-5-105, 15-5-201 — 15-5-211, and 15-5-301 — 15-5-316 and such other supporting documents as the council shall reasonably require.

(2)(A) All applications for guaranties shall be accompanied by a one-time premium payment to the Revenue Bond Guaranty Reserve Account in an amount equal to whichever is the larger amount of either:

(i) Three percent (3%) of the amount of the total principal and interest requirements from date of issuance to maturity of the Act No. 9 bonds or authority bonds guaranteed; or

(ii) Five percent (5%) of the principal amount of the Act No. 9 bonds or authority bonds guaranteed.

(B) The premium payment may be collected by the county or municipality or the authority from the lessee of the industrial project involved.

(b)(1) All applications filed with the council under the provisions of this subchapter shall first be reviewed by the appropriate designated staff officials of the council or by a committee consisting of members of the council for preliminary review and recommendation prior to being submitted for consideration by the council.

(2)(A) All applications submitted to the council and all supporting documents, instruments, proposed contracts, estimated costs, or other evidence submitted therewith shall be confidential and shall not be open to public review except as provided in this section.

(B) All staff meetings or meetings of the review committee of members of the council established for the purpose of giving preliminary review of such applications shall be confidential and shall not be open to the public.

(3) Upon conclusion of the preliminary review of each request for a guaranty under this subchapter, if the request for guaranty is submitted to the council with a recommendation that it be approved, the application and all supporting documents, including the findings and the recommendations resulting from the staff or review committee thereof, shall be an open public record available for inspection during all regular business hours.

(4) In the event that an application from a municipality or county or the authority requesting a guaranty under this subchapter is not recommended for approval by the council, that application and all supporting documents, including all findings and recommendations in regard thereto by the staff or review committee, shall continue to be confidential and not open to public inspection.

(5) The municipality or county or the authority shall be notified in writing of any staff or review committee determination that the application is not being submitted to the council with a recommendation that it be approved. This notice shall advise the municipality or county or the authority that the application will be kept confidential unless the municipality or county or the authority, within thirty (30) days from the date of receipt of the written notice, shall file a petition with the council requesting that the council hold a hearing in regard to the application. In this event, the application and all supporting documents shall become public information available for public inspection.

(c) The membership of a review committee, when acting in that capacity, shall never be considered to constitute a quorum of the council for the purpose of approving an application for guaranty under this subchapter.

(d) No provision of this section shall be interpreted to create any private right against any member of the council or any member of its staff.

History. Acts 1967, No. 173, § 5; 1971, No. 251, § 2; 1975 (Extended Sess., 1976), No. 1183, § 1; A.S.A. 1947, § 9-563; reen. Acts 1987, No. 996, § 1; 1987 (1st Ex. Sess.), No. 39, § 3; 1997, No. 540, § 29; 1997, No. 778, § 4.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 996, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Acts 1987, No. 996, § 2, provided, in part, that in the case of any conflict between the provisions of the act and any other law pertaining to meetings of, or the disclosure of information by, public agencies, the provisions of the act shall control.

Publisher's Notes. Acts 1971, No. 251, § 4, provided that all guaranties issued in accordance with the provisions of Acts 1967, No. 173, as amended, were ratified and validated.

As to legislative intent of Acts 1987 (1st Ex. Sess.), No. 39, see Publisher's Note to § 15-4-602.

15-4-607. Power to accept grants.

The Arkansas Economic Development Council is authorized to accept grants to its Revenue Bond Guaranty Reserve Account from any federal agencies, municipalities, corporations, foundations, individual donees, or authorities.

History. Acts 1967, No. 173, § 6; A.S.A. 1947, § 9-564.

15-4-608. Guaranty agreement provisions.

Guaranty agreements entered into by the Arkansas Economic Development Council under the provisions of this subchapter with respect to Act No. 9 bonds issued by any municipality or county or the Arkansas Development Finance Authority shall provide, among other things, that:

(1)(A) The council guarantees and the council is required to use the funds on deposit in the Revenue Bond Guaranty Reserve Account to meet amortization payments as guaranteed under this subchapter as the payments become due in the event and to the extent the issuer of the bonds is unable to meet such payments in accordance with the terms of the bond indenture when called on to do so by the trustee of the bondholders.

(B) Whenever the council, acting under the terms of the guaranty agreement, deems it necessary to assume the obligation of maintenance of any building or facility, the amortization payments of which the council has guaranteed under the provisions of this subchapter, the council may use funds on deposit in the account to pay insurance and maintenance costs required for the preservation of the building or facility and to protect the reserve account from loss or to minimize losses in such manner as deemed necessary and advisable by the council; and

(2)(A) The guaranty shall not be a general obligation of the council or of the State of Arkansas but shall be a special obligation. In no event shall the guaranty constitute an indebtedness of the council or of the State of Arkansas within the meaning of any constitutional or statutory limitation.

(B) Each guaranty agreement shall:

(i) Have plainly stated on the face thereof that:

(a) It has been entered into under the provisions of this subchapter;

(b) It does not constitute an indebtedness of the council or the State of Arkansas within any constitutional or statutory limitation; and

(c) The full faith and credit of the State of Arkansas or any of its revenues are not pledged to meet any of the obligations of the council under such a guaranty agreement; and

(ii) State that the obligation of the council under the guaranty shall be limited to the funds available in the account as authorized in this subchapter.

History. Acts 1967, No. 173, § 7; 1969, No. 397, § 3(c); A.S.A. 1947, § 9-565; Acts 1987 (1st Ex. Sess.), No. 39, § 4.

Publisher's Notes. As to legislative intent of Acts 1987 (1st Ex. Sess.), No. 39, see Publisher's Note to § 15-4-602.

15-4-609. Regulations.

(a) The Arkansas Economic Development Council is authorized and directed to conduct such investigation as it may determine necessary for the promulgation of regulations to govern the operation of the guaranty program authorized by this subchapter.

(b) These regulations shall include the restrictions and conditions imposed by this subchapter, including particularly those set forth in §§ 15-4-604 and 15-4-608. The regulations may include such other additional provisions, restrictions, and conditions as the council, after the investigation referred to in subsection (a) of this section, shall determine to be proper to achieve the most effective utilization of the guaranty program authorized by this subchapter. This may include, without limitation, a detailing of the remedies that must be exhausted by the bondholders or a trustee acting in their behalf prior to calling upon the council to perform under its guaranty agreement and the subrogation or other rights of the council with reference to the industrial project and its operation in the event the council makes payment pursuant to the applicable guaranty agreement.

(c) In this regard, the council is expressly authorized to enter into such agreements and otherwise take such action as may be necessary to exercise the authority conferred by this subchapter or to evidence the exercise thereof.

(d) The regulations promulgated by the council to govern the operation of the guaranty program shall contain specific provisions with respect to the rights of the council to enter, take over, and manage the industrial development properties upon default. These regulations shall set forth the respective rights of the council and the bondholders in regard thereto.

(e) Such regulations shall be in conformity with §§ 14-164-201 — 14-164-206, 14-164-208 — 14-164-224, 15-5-101 — 15-5-105, 15-5-201 — 15-5-211, and 15-5-301 — 15-5-316.

History. Acts 1967, No. 173, § 8; A.S.A. 1947, § 9-566; Acts 1987 (1st Ex. Sess.), No. 39, § 5.

Publisher's Notes. As to legislative intent of Acts 1987 (1st Ex. Sess.), No. 39, see Publisher's Note to § 15-4-602.

SUBCHAPTER 7 — INDUSTRIAL DEVELOPMENT GUARANTY BOND ACT

SECTION.

15-4-701. Title.

15-4-702. Authority to use Arkansas Economic Development Council moneys if account is insufficient.

15-4-703. Authority to issue bonds — Arkansas Economic Development Council determinations.

15-4-704. Authorizing resolution — Bond issuance, form, and contents.

SECTION.

15-4-705. Trust indenture.

15-4-706. Execution and delivery of bonds.

15-4-707. Temporary notes or bonds.

15-4-708. Sale of bonds.

15-4-709. Arkansas Economic Development Council obligations — Deposit of revenues and net proceeds.

15-4-710. Notice to State Board of Finance — Disposition of bond debt service amount.

Effective Dates. Acts 1981, No. 259, § 4; Feb. 27, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the strengthening of the State's industrial development revenue bond guaranty program is essential to the acceleration of industrial development in the State, that industrial growth provides additional employment and income to the people of this State, and that the immediate passage of

this Act is necessary to strengthen that program, thereby giving the Economic Development Commission of the State of Arkansas additional means of stimulating the economic growth of the State. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

15-4-701. Title.

This subchapter shall be known and may be cited as the "Industrial Development Guaranty Bond Act".

History. Acts 1969, No. 397, § 4; A.S.A. 1947, § 9-568.

15-4-702. Authority to use Arkansas Economic Development Council moneys if account is insufficient.

If the Arkansas Economic Development Council shall at any time determine that the moneys in the Revenue Bond Guaranty Reserve Account, sometimes referred to in this subchapter as "account", created and being maintained pursuant to the provisions of the Industrial Revenue Bond Guaranty Law, § 15-4-601 et seq., are not or will not be sufficient to meet the obligations of the account, the council is authorized to use the necessary amount of any available moneys that it may have which are not needed for or committed to other authorized functions and purposes of the council then or in the foreseeable future. Any such moneys so used may be reimbursed out of the account if and when there are moneys therein available for the purpose.

History. Acts 1969, No. 397, § 1; A.S.A. 1947, § 9-567; Acts 1997, No. 540, § 30.

15-4-703. Authority to issue bonds — Arkansas Economic Development Council determinations.

(a) If at the time there are no other available moneys to meet the then-present or reasonably projected obligations of the Revenue Bond Guaranty Account, the Arkansas Economic Development Council shall proceed promptly to issue bonds, as authorized in this subchapter, in such principal amounts as may be necessary to enable the council to meet, as and when due, all obligations of the account.

(b) The authority to issue bonds shall be a continuing authority that may be exercised from time to time.

(c) Determination of when additional moneys will be needed for the account, the amounts that will be needed, the availability or unavailability of other moneys, the necessity for the issuance of bonds, and the principal amounts of bonds to be issued shall be made solely by the council in the exercise of its discretion.

History. Acts 1969, No. 397, § 1; A.S.A. 1947, § 9-567.

15-4-704. Authorizing resolution — Bond issuance, form, and contents.

(a) The bonds shall be authorized by resolution of the Arkansas Economic Development Council.

(b) The bonds may be issued at one (1) time or in series from time to time. If in series, the initial series shall be designated "Series A" and subsequent series shall be designated in alphabetical order.

(c) All bonds issued under this subchapter, regardless of series, shall be on a parity as to lien, pledge, and security.

(d) The bonds may:

(1)(A) Be coupon bonds payable to bearer or may be registrable as to principal only with interest coupons or may be registrable as to both principal and interest without coupons, and may be made exchangeable for bonds of another denomination.

(B) The bonds of another denomination may in turn be either coupon bonds payable to bearer or coupon bonds registrable as to principal only or bonds registrable as to both principal and interest without coupons; and

(2) Be in such form and denomination, may have such date or dates, may be stated to mature at such times, may bear interest payable at such times and at such rate or rates, provided that no bond may bear interest at a rate exceeding ten percent (10%) per annum, may be made payable at such places within or without the State of Arkansas, may be made subject to such terms of redemption in advance of maturity at such prices, and may contain such terms and conditions, all as the commission shall determine.

(e) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration of ownership, as set forth in subsection (d) of this section.

(f) The authorizing resolution may contain any other terms, covenants, and conditions that the council determines are desirable, including, without limitation, those pertaining to the:

- (1) Maintenance of various funds and reserves;
- (2) Nature and extent of the security;
- (3) Custody and application of the proceeds of the bonds;
- (4) Collection and disposition of revenues; and
- (5) Rights, duties, and obligations of the council and of the holders and registered owners of the bonds.

History. Acts 1969, No. 397, § 1; 1971, No. 209, § 1; A.S.A. 1947, § 9-567.

15-4-705. Trust indenture.

(a) The resolution authorizing the issuance of bonds may provide for the execution of a trust indenture by the Arkansas Economic Development Council with a bank or trust company within or without the State of Arkansas.

(b) The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the council, including, without limitation, those pertaining to the maintenance of various funds and reserves, the nature and extent of the security, the custody and application of the proceeds of the bonds, the collection and disposition of revenues, and the rights, duties, and obligations of the council and of the holders and registered owners of the bonds.

History. Acts 1969, No. 397, § 1; A.S.A. 1947, § 9-567.

15-4-706. Execution and delivery of bonds.

(a) The bonds shall be executed by the facsimile signature of the Chair of the Arkansas Economic Development Council and by the manual signature of the Director of the Arkansas Economic Development Commission.

(b) Interest coupons attached to the bonds shall be executed with the facsimile signature of the chair.

(c) Delivery of the bonds and coupons so executed shall be valid notwithstanding any change in persons holding such offices occurring after the bonds have been executed.

History. Acts 1969, No. 397, § 1; A.S.A. 1947, § 9-567; Acts 1997, No. 540, § 77.

15-4-707. Temporary notes or bonds.

Temporary notes or bonds conforming generally to the provisions of this subchapter, exchangeable for definitive bonds, may be issued in the discretion of the Arkansas Economic Development Council.

History. Acts 1969, No. 397, § 1; A.S.A. 1947, § 9-567.

15-4-708. Sale of bonds.

(a) The bonds shall be sold at public sale on sealed bids.

(b) Notice of the sale shall be published one (1) time a week for three (3) consecutive weeks in a newspaper published in the City of Little Rock and having a general circulation throughout the State of Arkansas, with the first publication to be at least twenty (20) days prior to the date of sale.

(c) The award, if made, shall be to the bidder whose bid results in the lowest net interest cost, determined by computing the aggregate interest cost at the rate bid and deducting any premium or adding the amount of any discount.

History. Acts 1969, No. 397, § 1; 1971, No. 209, § 2; 1981, No. 259, § 2; A.S.A. 1947, § 9-567.

15-4-709. Arkansas Economic Development Council obligations — Deposit of revenues and net proceeds.

(a) All bonds issued under this subchapter shall be obligations of the Arkansas Economic Development Council only and shall not be obligations of the State of Arkansas and shall not be secured by a lien on any revenues of the State of Arkansas.

(b) The bonds shall be payable from the Guaranty Bond Fund created by this subchapter and the revenues which, pursuant to the provisions of this subchapter, are to be deposited therein.

(c) It shall be stated on the face of each bond that it has been issued under the provisions of this subchapter.

(d) The net proceeds, meaning gross proceeds less all expenses of authorizing and issuing the bonds which shall be first paid out of the proceeds, of all bonds issued under this subchapter shall be deposited into the Revenue Bond Guaranty Reserve Account, except that accrued interest paid by the purchaser shall be deposited in the fund.

History. Acts 1969, No. 397, § 1; A.S.A. 1947, § 9-567.

15-4-710. Notice to State Board of Finance — Disposition of bond debt service amount.

(a) The Arkansas Economic Development Council shall notify the State Board of Finance or the appropriate officer, board, or agency then

having jurisdiction over the moneys involved when it has determined to issue bonds under this subchapter and the amount that will be needed each month after the bonds are issued to provide for the payment, when due, of interest, principal, trustee's and paying agent's fees and any other necessary expenses and to provide for the establishing and maintaining of reserves, if the council determines to establish reserves. The monthly amount is referred to in this section as the "bond debt service amount".

(b) After receipt of notice, the board or the appropriate officer, board, or agency then having jurisdiction over the moneys involved shall set aside the bond debt service amount out of interest derived from the investment of state funds pursuant to § 19-3-219 [repealed].

(c) The bond debt service amount shall not be deposited or deemed to be a part of the State Treasury for purposes of Arkansas Constitution, Article 5, § 29; Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any other constitutional or statutory provision but shall be paid directly to the council for deposit in a special fund of the council in a bank or trust company selected by the council designated "Guaranty Bond Fund", also known as the "fund".

(d) Moneys in the fund shall be used to pay interest, principal, trustee's and paying agent's fees and to establish and maintain reserves all as shall be specified by the council in the resolution or trust indenture authorizing and securing the bonds.

(e) The interest earnings, meaning the bond debt service amount transferred directly to the council, are declared to be cash funds restricted in their use and dedicated and to be used solely as authorized in this subchapter.

(f) So long as any bonds issued under this subchapter are unpaid, no changes shall be made in laws of the State of Arkansas which would or could result in the council's not receiving as cash funds amounts of interest equaling the bond debt service amount.

History. Acts 1969, No. 397, § 1; A.S.A. 1947, § 9-567.

ferred to in this section, was repealed by Acts 1997, No. 847, § 4. For present law,

A.C.R.C. Notes. Section 19-3-219, re-

see § 19-3-501 et seq.

SUBCHAPTER 8 — ARKANSAS ENTERPRISE ZONE ACT OF 1989

SECTION.

15-4-801 — 15-4-815. [Expired.]

15-4-801 — 15-4-815. [Expired.]

A.C.R.C. Notes. The practical application of §§ 15-4-801 — 15-4-815 ended in April, 1995, and may be deemed superseded by § 15-4-1701 et seq.

Publisher's Notes. This subchapter expired June 30, 1995, pursuant to former

§ 15-4-814. The subchapter was derived from the following sources:

- 15-4-801. Acts 1989, No. 462, § 1.
- 15-4-802. Acts 1989, No. 462, § 2.
- 15-4-803. Acts 1989, No. 462, § 3.
- 15-4-804. Acts 1989, No. 462, § 4.

- 15-4-805. Acts 1989, No. 462, § 5.
- 15-4-806. Acts 1989, No. 462, § 6.
- 15-4-807. Acts 1989, No. 462, § 7; 1992 (1st Ex. Sess.), No. 58, § 1; 1992 (1st Ex. Sess.), No. 61, § 1.
- 15-4-808. Acts 1989, No. 462, § 10; 1989 (3rd Ex. Sess.), No. 52, § 1.
- 15-4-809. Acts 1989, No. 462, § 11.
- 15-4-810. Acts 1989, No. 462, § 12.
- 15-4-811. Acts 1989, No. 462, § 9.
- 15-4-812. Acts 1989, No. 462, § 8.
- 15-4-813. Acts 1989, No. 462, § 16; 1989, No. 854, § 2.
- 15-4-814. Acts 1989, No. 462, § 14.
- 15-4-815. Acts 1993, No. 1142, § 1.

SUBCHAPTER 9 — ARKANSAS DEVELOPMENT FINANCE CORPORATION ACT

SECTION.

- 15-4-901. Title.
- 15-4-902. Purposes.
- 15-4-903. Definitions.
- 15-4-904. Construction.
- 15-4-905. Supervision.
- 15-4-906. Articles of incorporation.
- 15-4-907. Application for preliminary approval.
- 15-4-908. Preliminary investigation.
- 15-4-909. Preliminary approval.
- 15-4-910. Organization.
- 15-4-911. Certificate of organization.
- 15-4-912. Final investigation and approval by the board.
- 15-4-913. Beginning of corporate existence — Certificate as evidence.
- 15-4-914. Amendment to articles of incorporation.
- 15-4-915. Management of corporation — Voting and transfer of common stock.

SECTION.

- 15-4-916. Powers.
- 15-4-917. Corporation to be nonprofit — Use of revenues.
- 15-4-918. Liability of directors and officers.
- 15-4-919. Retirement of preferred stock.
- 15-4-920. Exemption from the Arkansas Securities Act.
- 15-4-921. Obligations as negotiable instruments.
- 15-4-922. Debentures.
- 15-4-923. Bonds and notes — Use of earned surplus.
- 15-4-924. Eligibility for certain investments.
- 15-4-925. Exemption of interest and obligations from certain taxes.
- 15-4-926. Loan policy — Disposition of funds.
- 15-4-927. Dissolution.

Cross References. Capital Access Program for Small Businesses, § 15-5-1101 et seq.

Effective Dates. Acts 1957, No. 567, § 29: approved Apr. 2, 1957. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that the State of Arkansas has had heretofore an inadequate program for financing the agricultural, industrial and economic development of the state and of its several sections, that on account of such inadequate program, the State of Arkansas has been unable to provide for its inhabitants sufficient opportunities in agriculture and industry, that on account thereof the State of Arkansas is threatened with a decreasing standard of living for its inhabitants, that unless an adequate program for financing the agricultural, industrial

and economic development of the state be immediately undertaken, the State of Arkansas will suffer immediate and irreparable loss in population and the opportunity for agricultural and industrial expansion, and that only by the passage of this act and giving immediate effect to its provisions, can the State of Arkansas prevent losses in population and secure to its inhabitants opportunities for agricultural, industrial and economic development. An emergency, therefore, is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage."

Acts 1985, No. 667, § 7: Mar. 27, 1985. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that the State of Arkansas has had

heretofore an inadequate program for financing the agricultural, industrial, technological and economic development of the State and of its several regions, that on account of such inadequate program, the State of Arkansas has been unable to provide for its inhabitants sufficient opportunities in agriculture and industry, that on account thereof the State of Arkansas is threatened with a decreasing standard of living for its inhabitants, that unless an adequate program for financing the agricultural, industrial, technological and economic development of the State be immediately undertaken, the State of Ar-

kansas will suffer immediate and irreparable loss in population and the opportunity for agricultural and industrial expansion, and that only by the passage of this Act and giving immediate effect to its provisions, can the State of Arkansas prevent losses in population and secure to its inhabitants opportunities for agricultural, industrial, technological and economic development. An emergency, therefore, is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

CASE NOTES

Constitutionality.

This subchapter was not unconstitutional as permitting the lending of the credit of the state in violation of Ark. Const., Art. 16, § 1, as amended by Ark. Const. Amend. 13 [repealed], merely because it authorized the organization of corporations which could finance indus-

trial development corporations organized under Acts 1955, No. 404. *Andres v. First Ark. Dev. Fin. Corp.*, 230 Ark. 594, 324 S.W.2d 97 (1959).

This subchapter does not violate Ark. Const. Amends. 17 and 25. *Andres v. First Ark. Dev. Fin. Corp.*, 230 Ark. 594, 324 S.W.2d 97 (1959).

15-4-901. Title.

This subchapter shall be referred to and may be cited as the "Arkansas Development Finance Corporation Act".

History. Acts 1957, No. 567, § 1; A.S.A. 1947, § 67-1601.

15-4-902. Purposes.

The purposes of each development finance corporation organized under the provisions of this subchapter shall be to:

- (1) Promote, stimulate, develop, and advance the business prosperity and economic welfare of the State of Arkansas and its citizens;
- (2) Encourage and assist, through loans, investments, or other business transactions in the location of new business and industry in this state and rehabilitate and assist existing business and industry;
- (3) Stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state;
- (4) Provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state;
- (5) Cooperate and act in conjunction with other public or private organizations in the promotion and advancement of industrial, commercial, agricultural, and recreational development in this state; and

(6) Provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

History. Acts 1957, No. 567, § 13;
A.S.A. 1947, § 67-1613.

CASE NOTES

Cited: *Andres v. First Ark. Dev. Fin. Corp.*, 230 Ark. 594, 324 S.W.2d 97 (1959).

15-4-903. Definitions.

As used in this subchapter:

- (1) "Board" means the State Banking Board;
- (2) "Capital corporation" or "development finance corporation" means a corporation authorized to be organized under the provisions of this subchapter;
- (3) "Commissioner" means the Bank Commissioner; and
- (4) "Person", as used in § 15-4-922, includes a natural person, firm, association, corporation, joint-stock company, trust, and trust estate.

History. Acts 1957, No. 567, § 2; 1985,
No. 667, § 1; A.S.A. 1947, § 67-1602.

15-4-904. Construction.

- (a) This subchapter shall be construed liberally.
- (b) The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History. Acts 1957, No. 567, § 26;
A.S.A. 1947, § 67-1626.

15-4-905. Supervision.

(a) Each development finance corporation organized under the provisions of this subchapter shall be subject to the supervision, examination, and control of the Bank Commissioner. It shall make such reports of its condition to the commissioner as the commissioner shall prescribe.

(b) The commissioner is authorized to charge each development finance corporation under the commissioner's supervision assessment fees in order to defray the expenses of department supervision and examination at the rate of forty-five dollars (\$45.00) per examiner per hour of examination.

History. Acts 1957, No. 567, § 25;
1961, No. 21, § 2; A.S.A. 1947, § 67-1625;
Acts 2001, No. 64, § 1.

A.C.R.C. Notes. The term "department" as used in (b) is presumably a reference to the State Bank Department.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Regulated Industries, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 595.

15-4-906. Articles of incorporation.

(a) The articles of incorporation for any development finance corporation organized under the provisions of this subchapter shall state:

(1) The name of the corporation. The name shall include the words "capital corporation" or "development finance corporation" and such other designation as necessary to distinguish it from any subsequent development corporation which may be organized under the provisions of this subchapter and to distinguish it from any other corporation organized and existing under the laws of the State of Arkansas;

(2) The purpose for which the corporation is formed;

(3) The period of duration of the corporation, which may be perpetual or limited;

(4) The address of its principal office and the name and address of its agent upon whom process may be served;

(5) The total number of shares of common stock which the corporation is authorized to issue. The number shall be not less than one thousand (1,000) shares of common stock having a par value of one hundred dollars (\$100) per share;

(6) The total number of shares of preferred stock which the corporation is authorized to issue. The number shall be not less than thirty-six thousand (36,000) shares of preferred stock having a par value of twenty-five dollars (\$25.00) per share;

(7) In addition to the ex officio directors, the number of directors, not fewer than six (6) nor more than fifteen (15), to be elected at the annual meeting of the holders of common stock, the terms of office of the directors, and any provisions desirable for staggering their terms of office, except that the terms of office of directors and other matters pertaining to the directors may be provided in the bylaws of the corporation;

(8) The names and addresses of the incorporators who, with the ex officio directors, shall manage the affairs of the corporation until the first meeting of the holders of the common stock; and

(9) Any provisions not inconsistent with law which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the corporation.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this subchapter.

History. Acts 1957, No. 567, § 10; 1985, No. 667, § 2; A.S.A. 1947, § 67-1610.

15-4-907. Application for preliminary approval.

Any fifteen (15) or more qualified natural persons, all of whom shall be bona fide residents of this state and among whom each of the congressional districts in the state shall have at least one (1) representative and who desire to associate themselves for the purpose of establishing and operating a development finance corporation, may subscribe, acknowledge, and file with the Bank Commissioner for preliminary approval proposed articles of incorporation, in duplicate, as authorized by § 15-4-906.

History. Acts 1957, No. 567, § 3; A.S.A. 1947, § 67-1603.

15-4-908. Preliminary investigation.

As soon as practicable after the receipt of the articles of incorporation, the Bank Commissioner shall, from the best source of information at his or her command:

(1) Ascertain the qualifications, character, and general fitness of the applicants and their standing in their respective communities; and

(2) Determine whether public convenience and necessity require a development finance corporation.

History. Acts 1957, No. 567, § 4; A.S.A. 1947, § 67-1604.

15-4-909. Preliminary approval.

If the Bank Commissioner is satisfied that the applicants are bona fide residents of the state, that each of the congressional districts in the state is represented by at least one (1) applicant, that the applicants have the confidence of their respective communities, that public convenience and necessity require a development finance corporation, and that the proposed articles of incorporation conform to the provisions of § 15-4-906, the commissioner shall issue his or her certificate approving the articles of incorporation and authorizing the applicants to proceed with the organization of the development finance corporation.

History. Acts 1957, No. 567, § 5; A.S.A. 1947, § 67-1605.

15-4-910. Organization.

Upon receipt of the certificate of preliminary approval, the applicants may proceed to complete the organization of the development finance corporation, to obtain subscriptions for and payment of its capital stock, and to do all other things necessarily incidental and preliminary to its transacting business.

History. Acts 1957, No. 567, § 6; A.S.A. 1947, § 67-1606.

15-4-911. Certificate of organization.

(a) When the applicants shall have completed the organization of the proposed development finance corporation, they shall file with the Bank Commissioner a certificate of organization executed by the president of the development finance corporation, attested by its secretary, and with its seal affixed thereto, certifying:

(1) The names and addresses of all of its subscribers of common stock, the number of shares subscribed, and the number of shares fully paid for by each;

(2) The total number of shares of common stock subscribed but not fully paid for;

(3) The total number of shares of common stock paid in full;

(4) The total number of shares of preferred stock subscribed but not fully paid for;

(5) The total number of shares of preferred stock paid in full;

(6) The name and address of the depository or the names and addresses of the depositories, if more than one (1), holding on deposit the funds of the development finance corporation; and

(7) The names and addresses of the officers, directors, and members of the executive committee, if any, of the development finance corporation.

(b) The certificate of organization of the applicant shall be accompanied by the certificate of the named depository or by the certificates of the named depositories, if more than one (1), certifying the amount of the funds on deposit to the credit of the development finance corporation.

(c) The certificate of organization shall be accompanied also by any bylaws or by any regulations which may have been adopted by the directors of the corporation.

History. Acts 1957, No. 567, § 7; A.S.A. 1947, § 67-1607.

15-4-912. Final investigation and approval by the board.

(a) Immediately upon the filing of the certificate of organization by the applicants, the Bank Commissioner shall submit to the State Banking Board the proposed articles of incorporation and the certificate of organization of the applicants.

(b) As soon as practicable thereafter, the board shall direct the commissioner to issue the applicants a certificate of incorporation in such form as it may prescribe, if the board, from the best source of information at its command, determines that:

(1) Public convenience and necessity continue to require the development finance corporation;

(2) The holders of the fully paid common stock of the development finance corporation are at least one hundred (100) in number;

(3) All of the subscribers of the common stock of the development finance corporation are qualified natural persons and bona fide residents of the State of Arkansas;

(4) Each congressional district in the state is represented by at least ten percent (10%) of the fully paid common stock of the development finance corporation and by at least one (1) member of the board of directors;

(5) Not less than one hundred thousand dollars (\$100,000) of common stock has been subscribed and fully paid for;

(6) Not less than nine hundred thousand dollars (\$900,000) of preferred stock has been subscribed and fully paid for; and

(7) The bylaws and regulations submitted, if any, are in conformity with the articles of incorporation and the provisions of this subchapter, are not contrary to the laws of this state, and are otherwise satisfactory.

(c) The commissioner shall return to the applicants one (1) of the copies of the articles of incorporation theretofore submitted to him or her by the applicants, upon which copy he or she shall have endorsed the fact of the issuance by him or her of the certificate of incorporation.

(d) If bylaws and regulations are submitted and are found satisfactory by the board, the commissioner shall issue his or her certificate of approval thereof.

History. Acts 1957, No. 567, § 8; A.S.A. 1947, § 67-1608.

15-4-913. Beginning of corporate existence — Certificate as evidence.

(a) Upon the issuance of the certificate of incorporation by the Bank Commissioner, the corporate existence of the development finance corporation shall begin.

(b) The certificate of incorporation shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed by the applicants have been complied with and that the development finance corporation has been incorporated under this subchapter.

(c) A copy of the articles of incorporation so endorsed by the commissioner, as prescribed in § 15-4-912, shall be filed for recordation in the office of the county clerk in the county in which the principal office of the development finance corporation is located.

History. Acts 1957, No. 567, § 9; A.S.A. 1947, § 67-1609.

15-4-914. Amendment to articles of incorporation.

(a) A corporation organized under the provisions of this subchapter may amend its articles of incorporation by a majority vote of the stock, represented in person or by proxy at any regular meeting or at any

special meeting of the holders of the common stock called for that purpose.

(b) The power to amend shall include the power to accomplish any desired change in the provisions of the articles of incorporation and to include any purpose, power, or provision authorized to be included in the original articles of incorporation or by any amendment to this subchapter.

(c) Articles of amendment signed by the president or vice president and attested by the secretary certifying to such amendment and its lawful adoption shall be executed, acknowledged, and filed with the Bank Commissioner and when approved by the State Banking Board recorded with a certificate of the commissioner approving the articles of amendment in the same manner as the original articles of incorporation.

(d) As soon as the commissioner shall issue his or her certificate of amendment, the amendment or amendments shall be in effect.

History. Acts 1957, No. 567, § 11;
1985, No. 667, § 3; A.S.A. 1947, § 67-1611.

15-4-915. Management of corporation — Voting and transfer of common stock.

(a) Only the holders of common stock, through the board of directors, shall manage the affairs of the corporation. Each holder of common stock shall be entitled to one (1) vote, in person or by proxy, for each share of common stock held by him or her and, in voting for the directors of the corporation, shall be entitled to exercise the right of cumulative voting, except that ex officio directors shall be excluded from any calculation with respect to cumulative voting.

(b) In the event of the transfer of shares of common stock, whether by act of the holder or by operation of law, the names of the proposed transferees shall be submitted to the directors of the development finance corporation and the directors may refuse to approve the transfer. In this event, the development finance corporation shall have the option to purchase the shares of common stock at par. Shares of common stock so purchased shall be cancelled and shares in lieu thereof may be reissued and sold by the corporation. In the event that the directors do not purchase the shares of common stock subject to transfer, the shares of common stock then may be transferred without the approval of the directors.

(c)(1)(A) In addition to the directors elected by the holders of common stock of a development finance corporation, the Director of the Arkansas Economic Development Commission, the President of the Arkansas Development Finance Authority, and the Executive Director of the Arkansas Science and Technology Authority or persons holding similar executive positions in any agency or instrumentality succeeding thereto shall be ex officio members of the board of directors of each corporation created under this subchapter.

(B) Ex officio directors shall have all rights, duties, and obligations of a director except that their terms of office shall be concurrent with their employment in the position by the respective agencies and shall be deemed to have resigned as a director of the corporation when such employment is terminated.

(C) The successor to such a person shall become a director without further action by the board of directors upon receipt of written notice by the president of the corporation from the chair of the board or commission of the respective agency that the person has become so employed.

(2) It shall not be necessary to amend the articles of incorporation of any development finance corporation organized and existing prior to the enactment of this provision, and the provisions of this subsection shall be applicable to all such corporations on March 27, 1985.

History. Acts 1957, No. 567, § 12; 1985, No. 667, § 4; A.S.A. 1947, § 67-1612; Acts 1997, No. 540, § 78.

15-4-916. Powers.

In furtherance of the purposes set out in § 15-4-902, each corporation organized under this subchapter shall have the power:

(1) To sue and be sued, complain, and defend in its corporate name;

(2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;

(3) To adopt a corporate seal, which may be altered at pleasure, and to use it or a facsimile thereof as required by law;

(4) Within the limitations hereinafter imposed and in the manner hereinafter prescribed, to borrow money and otherwise contract indebtedness, to issue its bonds, notes, debentures, or other obligations therefor with or without security, and, if with security, to secure the payment thereof by mortgage, pledge, or deed of trust on all or any part of its property, assets, revenues, or income;

(5) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property or any interest therein;

(6) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property or assets;

(7) In the exercise of good judgment, to make sound and prudent loans to any person, firm, corporation, joint-stock company, association, or trust and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith, consistent with the provisions of this subchapter;

(8) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of bonds, securities, or evidences of indebtedness created by any other corporation of this state or any other state or government or created by any individual, unincorporated association, trust estate, improvement district, or government or municipal agency of any character;

(9) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of any other corporation of this or any other state or government subject to such restrictions and limitations, if any, as may be imposed by the laws of this or any other state in which the corporation may do business, and while owner of such stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(10) To make any and all contracts necessary or convenient for the exercise of the powers granted in this subchapter;

(11) To elect or appoint officers, agents, and employees of the corporation and to define their duties and fix their compensation;

(12) To conduct its business and to have officers within or without the state;

(13) To accept gifts or grants of money, service, or property, real or personal;

(14) With the approval of the board, by action of the directors of the corporation, to make and alter bylaws and regulations not inconsistent with the articles of incorporation or with the laws of this state for the administration and regulation of the affairs of the corporation;

(15) To encourage and promote the cultural, industrial, economic, and recreational development of the State of Arkansas;

(16) To do and perform any and all acts and things and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the corporation is organized; and

(17)(A) To assist minority businesses in obtaining loans or other means of financial assistance.

(B) The terms and conditions of the loans or financial assistance, including the charges for interest and other services, will be consistent with the provisions of this subchapter.

(C) In order to comply with this requirement, efforts must be made to solicit for review and analysis proposed minority business ventures.

(D) Basic loan underwriting standards will not be waived to inconsistently favor minority persons or businesses, or both, from the intent of the corporation's lending practices.

History. Acts 1957, No. 567, § 13; 1985, No. 667, § 6; A.S.A. 1947, § 67-1613.

CASE NOTES

Cited: *Andres v. First Ark. Dev. Fin. Corp.*, 230 Ark. 594, 324 S.W.2d 97 (1959).

15-4-917. Corporation to be nonprofit — Use of revenues.

(a) Each corporation organized under the provisions of this subchapter shall be operated without profit to its members. No dividends shall be declared at any time on the common or preferred stock of such a corporation.

(b) All revenues of the corporation shall be devoted to the payment of interest on the bonds of the corporation, to the maintenance of reserves, to the establishment and maintenance of a sinking fund for the retirement of debentures, and to transfers to earned surplus, substantially in the order named, but as may be more fully provided in the bylaws of the corporation.

History. Acts 1957, No. 567, § 14;
A.S.A. 1947, § 67-1614.

15-4-918. Liability of directors and officers.

The directors and officers of the development finance corporation organized under the provisions of this subchapter shall not be responsible for losses unless the losses shall have been occasioned by the willful misconduct of such directors or officers.

History. Acts 1957, No. 567, § 14;
A.S.A. 1947, § 67-1614.

15-4-919. Retirement of preferred stock.

(a) The outstanding preferred stock of a corporation authorized and issued as provided in this subchapter shall be retired from time to time from the proceeds received by the corporation from the issuance and disposal of its debentures, as provided in this subchapter, and until all of the issued and outstanding preferred stock of the corporation shall have been retired, all proceeds of the corporation received from the issuance and disposal of its debentures must be used for the retirement of the outstanding preferred stock of the corporation.

(b) Such preferred stock shall be retired by lot, and the procedure for determining the preferred stock so to be retired and for its retirement may be provided in the bylaws of the corporation.

(c) Preferred stock of the corporation retired as provided in this section shall be cancelled and shall not be reissued.

History. Acts 1957, No. 567, § 15;
A.S.A. 1947, § 67-1615.

15-4-920. Exemption from the Arkansas Securities Act.

The bonds and all other obligations issued by any development finance corporation organized and existing under the provisions of this subchapter shall be exempt from the provisions of the Arkansas Securities Act, § 23-42-101 et seq.

History. Acts 1957, No. 567, § 20;
A.S.A. 1947, § 67-1620.

15-4-921. Obligations as negotiable instruments.

All bonds, notes, debentures, and other obligations of a development finance corporation authorized under and issued in compliance with the provisions of this subchapter shall be, shall have, and are declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code, § 4-1-101 et seq.

History. Acts 1957, No. 567, § 21;
A.S.A. 1947, § 67-1621.

15-4-922. Debentures.

(a) Any development finance corporation organized under the provisions of this subchapter may issue debentures which shall be unsecured and noninterest-bearing and which may be payable all at one (1) time or serially over such a period of time as the corporation may provide for each such issue of debentures.

(b) The debentures issued under the provisions of this subchapter shall be issued by the corporation in such form as its directors may provide and shall be executed by the president and secretary of the corporation and be sealed with its corporate seal. In the event any of the officers whose signatures appear on any such obligation shall cease to be officers before the delivery thereof, such signatures nevertheless shall be valid and sufficient for all purposes the same as if they had remained in office until such delivery.

(c) The debentures shall not be offered for sale to the public. Instead, as a condition precedent to the purchase by the development finance corporation of bonds issued by any corporation organized and existing under the provisions of §§ 15-4-101, 15-4-102, 15-4-201 — 15-4-204, 15-4-206, 15-4-209 — 15-4-212, and 15-4-501 — 15-4-525, or as a condition precedent to the purchase by the development finance corporation of any common or preferred stock of any corporation, or as a condition precedent to the loan by the development finance corporation of any sum of money to any person, the development finance corporation may require that the corporation, the bonds or stocks of which are purchased or the person to whom money is loaned, shall purchase from the development finance corporation at par debentures equal to at least five percent (5%) of the amount of the bonds or stocks purchased or the sum of money loaned. The corporation or the person so purchasing the debentures of the development finance corporation shall pledge the debentures so purchased to the development finance corporation as additional security for the payment of the bonds purchased, for the retirement of the stocks purchased, or for the repayment of the loan made by the development finance corporation.

(d) Until all of the preferred stock of the development finance corporation issued and outstanding has been fully retired as provided in

this subchapter, the entire proceeds reserved by the corporation from such sales of debentures shall be used exclusively for the retirement of the preferred stock of the corporation.

History. Acts 1957, No. 567, § 17;
A.S.A. 1947, § 67-1617.

15-4-923. Bonds and notes — Use of earned surplus.

(a)(1) Any development finance corporation organized under the provisions of this subchapter, from time to time, as the conduct of its business requires, may issue and sell at a price not less than par plus accrued interest its bonds or notes not to exceed, in a total aggregate amount outstanding at any one (1) time, ten (10) times the total amount of its fully paid common stock, its fully paid issued and outstanding preferred stock, its debentures issued and outstanding, and the amount of its earned surplus in excess of a reserve set aside therefrom equal in amount to five percent (5%) of the aggregate total amount of loans of the development finance corporation outstanding at any one (1) time.

(2) However, the validity of bonds or notes of the corporation valid at the time of the issuance and delivery shall not thereafter be affected if in excess of such ratio.

(b)(1) The bonds or notes of the development finance corporation shall contain such provisions concerning the limitations, conditions, and security therefor, if any, and shall be in such form and denominations; shall have such dates and maturities; shall bear interest payable at such times and places and at such rates; shall be payable at such places within or without the state; and shall contain such provisions as to registration of ownership, if registration is deemed desirable, all as the directors of the corporation shall determine in conformity with the provisions of this subchapter.

(2) They shall be executed by the president and secretary of the corporation and be sealed with the corporate seal, and, in the event any of the officers whose signatures appear on any such obligation shall cease to be officers before the delivery thereof, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officers had remained in office until such delivery.

(c)(1) Unless otherwise specifically stated therein, all bonds or notes of a development finance corporation issued under the provisions of this subchapter, irrespective of the date of issue, shall be on a parity as to security and shall be secured by a lien on the entire assets of the corporation. The lien shall be a first lien and superior to all other debts and to all other encumbrances of whatsoever nature on all of the assets of the corporation.

(2) However, the corporation may issue one (1) or more series of bonds or notes of differing parity as to security or specifying a particular lien, pledge, or other security therefor, as the board of directors shall determine.

(d) The earned surplus of the corporation, in whole or in part, in the discretion of the directors of the corporation, may be invested as

provided in the bylaws of the corporation and retained in reserve to meet losses and contingencies of the corporation.

History. Acts 1957, No. 567, § 18; 1985, No. 667, § 5; A.S.A. 1947, § 67-1618.

15-4-924. Eligibility for certain investments.

Any city or town in this state, any board, commission, or other authority duly established by ordinance of any city or town, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any city or town may invest any of its funds not immediately needed for its purposes in the bonds of any development finance corporation organized under the provisions of this subchapter.

History. Acts 1957, No. 567, § 22; A.S.A. 1947, § 67-1622.

15-4-925. Exemption of interest and obligations from certain taxes.

Interest on bonds, notes, or other obligations of any development finance corporation issued under and in accordance with the provisions of this subchapter shall be exempt from all state income taxes and the principal thereof from inheritance taxes.

History. Acts 1957, No. 567, § 23; A.S.A. 1947, § 67-1623.

15-4-926. Loan policy — Disposition of funds.

(a) A development finance corporation organized under the provisions of this subchapter shall not lend money when credit is readily available elsewhere. Before granting a loan, the directors of the corporation shall endeavor so far as is reasonably possible to ascertain that the first opportunity to grant the loan has been given to the banks, the insurance companies, and to the other lending institutions of the state.

(b) No development finance corporation organized under the provisions of this subchapter shall receive money on deposit.

(c) The development finance corporation shall not deposit any of its funds in any banking institution unless the institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the directors, exclusive of any director who is an officer or director of the depository so designated.

History. Acts 1957, No. 567, § 24; A.S.A. 1947, § 67-1624.

15-4-927. Dissolution.

(a)(1) Any corporation organized under this subchapter may dissolve after the:

(A) Payment in full and cancellation of all its bonds and other obligations issued under the provisions of this subchapter; or

(B) Deposit in trust with the respective trustees designated in any deeds of trust given to secure the payment of any such obligations of a sum of money sufficient for the purpose.

(2) Dissolution may be effected by the vote of a majority of the common stock of the corporation, represented in person or by proxy, at any regular meeting or at any special meeting of the holders of the common stock of the corporation called for that purpose.

(b) A certificate of dissolution shall be signed by the president or vice president and attested by the secretary certifying to the dissolution and stating that they have been authorized to execute and file the certificate by a vote cast in person or by proxy by holders of a majority of the common stock of the corporation.

(c) The certificate of dissolution shall be executed, acknowledged, and filed and recorded in the same manner as the original articles of incorporation. As soon as the Bank Commissioner shall have accepted and endorsed on the certificate of dissolution his or her approval thereof, the corporation shall be deemed to be dissolved.

(d)(1) However, the corporation shall continue for the purpose of paying, satisfying, and discharging any other existing liabilities or obligations, collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name.

(2)(A) Any assets remaining after all liabilities or other obligations of the corporation have been satisfied or discharged shall be distributed pro rata first among the then-holders, if any, of the preferred stock of the corporation.

(B) Upon the retirement of the preferred stock of the corporation, if any, at par, any remaining assets of the corporation shall be distributed next, pro rata, among the then-holders of the common stock of the corporation.

(C) Upon the retirement of the common stock of the corporation at par, all remaining assets of the corporation shall be paid into the State Treasury.

History. Acts 1957, No. 567, § 16;
A.S.A. 1947, § 67-1616.

SUBCHAPTER 10 — ARKANSAS CAPITAL DEVELOPMENT COMPANY ACT

SECTION.

15-4-1001. Title.

15-4-1002. Definitions.

SECTION.

15-4-1003. Construction.

15-4-1004. Application for approval.

SECTION.

- 15-4-1005 — 15-4-1007. [Repealed.]
- 15-4-1008. Ex officio members of the governing board.
- 15-4-1009. Liability of governing board and officers.
- 15-4-1010. [Repealed.]
- 15-4-1011. Investigation and approval by the State Banking Board.
- 15-4-1012. Commencement of existence.
- 15-4-1013. Articles.
- 15-4-1014. Amendment to articles.
- 15-4-1015. Management of a capital development company.
- 15-4-1016. Powers.
- 15-4-1017. Dividends and distributions.
- 15-4-1018. Bonds or notes of the company.
- 15-4-1019. Authority of other corporations and financial institutions.

SECTION.

- 15-4-1020, 15-4-1021. [Repealed.]
- 15-4-1022. Compliance with the Arkansas Securities Act.
- 15-4-1023. Obligations as negotiable instruments.
- 15-4-1024. Eligibility for certain investments.
- 15-4-1025. Exemption from certain taxes.
- 15-4-1026. Tax credit.
- 15-4-1027. Investment and loan policy.
- 15-4-1028. Supervision of capital development companies.
- 15-4-1029. Dissolution.
- 15-4-1030. Merger.
- 15-4-1031. Application of business laws.

Effective Dates. Acts 1985, No. 410, § 32: approved Mar. 19, 1985. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the State of Arkansas has had heretofore an inadequate program for financing the agricultural, industrial, technological and economic development of the State, that on account of such inadequate program, the State of Arkansas has been unable to provide for its inhabitants sufficient opportunities in agriculture and industry, that on account thereof the State of Arkansas is threatened with a decreasing standard of living for its inhabitants, that unless an adequate program for financing the agricultural, industrial, technological, scientific and economic development of the State be immediately undertaken, the State of Arkansas will suffer immediate and irreparable loss in population and the opportunity for agricultural and industrial expansion, and that only by the passage of this Act and giving immediate effect to its provisions, can the State of Arkansas prevent losses in population and securing to its inhabitants opportunities for agricultural, industrial, technological, scientific and economic development. An emergency, therefore, is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect

and be in full force from and after its passage."

Acts 1991, No. 333, § 5: approved Mar. 4, 1991. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that there exists inadequate financial incentive to encourage the use of capital development corporations to finance the agricultural, industrial, technological, scientific and economic development of the State, that on account of such inadequate financial incentive, capital development corporations have not been fully utilized to provide inhabitants of the State sufficient opportunities in agriculture and industry, that on account thereof the State of Arkansas is threatened with a decreasing standard of living for its inhabitants, that unless an adequate program for financing the agricultural, industrial, technological, scientific and economic development of the State be immediately undertaken, the State of Arkansas will suffer immediate and irreparable loss in population and the opportunity for agricultural and industrial expansion, and that only by the passage of this Act and giving immediate effect to its provisions, can the State of Arkansas prevent losses in population and secure to its inhabitants opportunities for agricultural, industrial, technological, scientific and economic development. An emergency, therefore, is

hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage.”

Acts 2003, No. 860, § 16: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the flow of development capital funds into and within the state has been and continues to be, insufficient to support the growth of businesses and infrastructure development; that as a result of the lack of available capital sources, the state has suffered economic losses because of the inability to compete with other states in providing capital resources for business and infrastructure development; that this legislation will stimulate the flow of private capital and long-term loan funds that are vital to the sound financing of businesses and will encourage growth, expansion, and modernization through the reinstatement of tax credits; that unless an adequate program to encourage private capital investment is undertaken, the state will suffer further irreparable loss as a result of the continued inability to support business and infrastructure development, and from the lost opportunities for economic expansion. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be effective on July 1, 2003.”

Acts 2005, No. 1759, § 6: Apr. 5, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the flow of venture capital funds into the state has been insufficient to support the growth of businesses; that as a result of the lack of available venture capital funds, the state has suffered economic losses because businesses seeking venture capital are sometimes required to relocate outside of this state as a condition of receiving funds; that this act will stimulate the flow of private capital and long-term loan funds that are vital to the sound financing of businesses and will encourage growth, expansion, and modernization through the reinstatement of tax credits; and that unless an adequate program to encourage

venture capital investment is undertaken, the state will immediately suffer further irreparable loss as a result of the continued departure from the state of businesses seeking venture capital funds and from the lost opportunities for economic expansion. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 566, § 4: Mar. 28, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the flow of development capital funds into and within the state continues to be insufficient to support the growth of businesses that will bring higher-paying jobs to inhabitants of the state; that as a result of the lack of available capital sources the state has suffered economic losses because of the inability to compete with other states in providing capital resources for high-wage businesses; that this legislation will stimulate the flow of private capital vital to the attraction, growth, and modernization of targeted businesses and allow the coordination by state agencies of tax credits with other economic development tools; that unless such a program of tax credits is undertaken, the state will suffer further irreparable loss as a result of the continued inability to attract and support business development and from lost opportunities for economic expansion. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Business Law, 8 U. Ark. Little Rock L.J. 553.

15-4-1001. Title.

This subchapter shall be referred to and may be cited as the "Arkansas Capital Development Company Act".

History. Acts 1985, No. 410, § 1; A.S.A. 1947, § 67-1627; Acts 2003, No. 860, § 1.

15-4-1002. Definitions.

(a) As used in this subchapter:

(1) "Articles" means the articles of incorporation, articles of organization, certificate of limited partnership, or any similar document adopted by a capital development company in connection with its formation;

(2) "Board" means the State Banking Board;

(3) "Business law" means:

(A) The Arkansas Business Corporation Act, § 4-27-101 et seq.;

(B) The Small Business Entity Tax Pass Through Act, § 4-32-101 et seq.;

(C) The Uniform Partnership Act, § 4-46-101 et seq.;

(D) The Uniform Limited Partnership Act (2001), § 4-47-101 et seq.;

(E) The Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.; or

(F) Any other laws related to the formation of business entities;

(4) "Commissioner" means the Bank Commissioner;

(5) "Capital development company" means a capital development company authorized to be organized under this subchapter;

(6) "Development finance corporation" means a development finance corporation organized under the Arkansas Development Finance Corporation Act, § 15-4-901 et seq.;

(7) "Equity capital" means the amount by which the total assets of a capital development company exceed the total liabilities of the company;

(8) "Equity interest" means any share of stock, limited liability company interest, partnership unit of ownership, or other evidence of ownership of an entity;

(9) "Financial institution" means any banking corporation or institution, trust company, savings bank, savings and loan association, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds;

(10) “Governing board” means the individual or individuals authorized under applicable business law and the capital development company’s governing documents to manage the business of the company;

(11) “Governing documents” means the bylaws, operating agreement, partnership agreement, or other document adopted by the capital development company to govern its conduct; and

(12) “Person” includes any natural person, firm, association, corporation, joint-stock company, trust, trust estate, partnership, limited liability company, joint venture, and any other similar entity authorized by law.

(b)(1) The singular number includes the plural.

(2) The masculine form includes the feminine.

History. Acts 1985, No. 410, § 2; A.S.A. 1947, § 67-1628; Acts 2003, No. 860, § 1; 2007, No. 15, § 2. **Amendments.** The 2007 amendment rewrote (a)(3)(D).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Mathews, Corporate Statutes—Which One Applies?, 13 U. Ark. Little Rock L.J. 93.

15-4-1003. Construction.

(a) This subchapter shall be construed liberally.

(b) The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History. Acts 1985, No. 410, § 29; A.S.A. 1947, § 67-1655.

15-4-1004. Application for approval.

(a) Any development finance corporation that desires to establish and operate a capital development company may subscribe, acknowledge, and file in duplicate with the Bank Commissioner an application for approval and proposed articles.

(b) The application for approval shall include a certificate executed by the chief executive officer of the capital development company certifying:

(1) That not less than one hundred thousand dollars (\$100,000) of equity interests have been subscribed and fully paid for;

(2) The name and address of the depository or the names and addresses of the depositories, if more than one (1), holding on deposit the funds of the company; and

(3) The names and addresses of the members of the governing board and the officers, managers, and other persons responsible for carrying out the day-to-day operations of the company.

(c) The application for approval shall also be accompanied by any governing documents adopted by the governing board or the subscribers of equity interests of the company.

History. Acts 1985, No. 410, § 3; A.S.A. 1947, § 67-1629; Acts 2003, No. 860, § 2.

15-4-1005 — 15-4-1007. [Repealed.]

Publisher's Notes. These sections, concerning preliminary investigation, preliminary approval, and organization, were repealed by Acts 2003, No. 860, § 3. The sections were derived from the following sources:

15-4-1005. Acts 1985, No. 410, § 4; A.S.A. 1947, § 67-1630.

15-4-1006. Acts 1985, No. 410, § 5; A.S.A. 1947, § 67-1631.

15-14-1007. Acts 1985, No. 410, § 6; A.S.A. 1947, § 67-1632.

For present law, see § 15-4-1011.

15-4-1008. Ex officio members of the governing board.

(a)(1) The Director of the Arkansas Economic Development Council, the President of the Arkansas Development Finance Authority, and the President of the Arkansas Science and Technology Authority, or their respective designees, or persons holding similar executive positions in any agency or instrumentality succeeding thereto, or their respective designees, shall be ex officio members of the governing board of each capital development company created under this subchapter during their respective terms of office.

(2) An ex officio member under subdivision (a)(1) of this section may elect not to serve as a member of the governing board of a capital development company. He or she may change the election at any time.

(b) Ex officio members of the governing board shall have all rights, duties, and obligations of other members of the governing board under the company's governing documents.

History. Acts 1985, No. 410, § 7; A.S.A. 1947, § 67-1633; Acts 1997, No. 540, § 79; 2003, No. 860, § 4; 2005, No. 1759, § 1.

redesignated former (a) as present (a)(1); inserted "or their respective designees" twice in present (a)(1); and added (a)(2).

Amendments. The 2005 amendment

15-4-1009. Liability of governing board and officers.

No member of the governing board and no officer, manager, or other person responsible for carrying out the daily operations of a capital development company shall be responsible for any loss of assets of the company unless the loss was occasioned by the willful misconduct of that person.

History. Acts 1985, No. 410, § 16; A.S.A. 1947, § 67-1642; Acts 2003, No. 860, § 4.

15-4-1010. [Repealed.]

Publisher's Notes. This section, concerning certificate of organization, was repealed by Acts 2003, No. 860, § 5. The section was derived from Acts 1985, No. 410, § 8; A.S.A. 1947, § 67-1634. For present law, see § 15-4-1011.

15-4-1011. Investigation and approval by the State Banking Board.

(a) As soon as practicable after the receipt of the application for approval and the articles, the Bank Commissioner shall:

(1) Ascertain the qualifications, character, and general fitness of the applicant and its standing in the community; and

(2) Determine whether public convenience and necessity require a capital development company.

(b)(1) Thereafter, the commissioner shall submit the application and the proposed articles of the company to the State Banking Board.

(2) As soon as practicable thereafter, the board shall direct the commissioner to issue to the company a certificate of organization in whatever form the commissioner may prescribe if the board determines that:

(A) Public convenience and necessity continue to require the capital development company;

(B) Each congressional district in the state is represented by at least one (1) member of the governing board;

(C) Not less than one hundred thousand dollars (\$100,000) of equity interests have been subscribed and fully paid for; and

(D) The governing documents submitted, if any, are in conformity with the articles and the provisions of this subchapter, are not contrary to the laws of the state, and are otherwise satisfactory.

(c) If a certificate of organization is issued under subdivision (b)(2) of this section, the commissioner shall return one (1) copy of the articles to the applicant and shall endorse on the face of the articles that the certificate of organization has been issued.

History. Acts 1985, No. 410, § 9; A.S.A. 1947, § 67-1635; Acts 2003, No. 860, § 6.

15-4-1012. Commencement of existence.

(a) Upon the issuance of the certificate of organization by the Bank Commissioner, the existence of the capital development company shall begin.

(b) The certificate of organization shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed by the applicant have been complied with and that the capital development company has been organized under this subchapter and the applicable business law under which it was formed.

(c) A copy of the articles so endorsed by the commissioner as prescribed by § 15-4-1011 shall be filed for recordation in the office of the Secretary of State.

History. Acts 1985, No. 410, § 10;
A.S.A. 1947, § 67-1636; Acts 2003, No.
860, § 6.

15-4-1013. Articles.

The articles for any capital development company shall state:

(1) The name of the company. The name shall include the words "Capital Development Company";

(2) The purpose for which the company is formed;

(3) The period of duration of the company, which may be perpetual or limited;

(4) The address of the company's principal office and the name and address of its agent upon whom process may be served;

(5) Any provision required by the applicable business law under which the company is formed; and

(6)(A) Any provision not inconsistent with law that the organizers choose to insert for the regulation of the business and the conduct of the affairs of the company.

(B) It shall not be necessary to state in the articles the powers enumerated in this subchapter.

History. Acts 1985, No. 410, § 11;
A.S.A. 1947, § 67-1637; Acts 2003, No.
860, § 6.

15-4-1014. Amendment to articles.

(a) A capital development company may amend its articles in accordance with the applicable business law under which it was formed or with the provisions of its governing documents.

(b)(1) Articles of amendment adopted in accordance with subsection (a) of this section shall be executed by the authorized officers of the company and filed with the Bank Commissioner for approval.

(2) The commissioner shall issue a certificate approving the articles of amendment if the articles of amendment do not violate this subchapter or other applicable law.

(3) An amendment is effective when the commissioner issues the certificate of approval.

(4) The company shall record the articles of amendment and the commissioner's certificate of approval in the same manner as the original articles.

History. Acts 1985, No. 410, § 12;
A.S.A. 1947, § 67-1638; Acts 2003, No.
860, § 6.

15-4-1015. Management of a capital development company.

(a) The governing board shall manage the affairs of the capital development company.

(b)(1) If a person desires to transfer an equity interest or the tax credit associated therewith, or both, whether by act of the person or by operation of law, the name or names of the proposed transferees and the terms of the proposed transfer shall be submitted to the governing board of the company.

(2) If the requested transfer is not denied by the governing board of the capital development company within fifteen (15) days from the date of receipt of the name or names of the proposed transferees and the terms of the proposed transfer, the transfer shall be deemed approved by the governing board.

(3) If the governing board refuses to approve the transfer, the company may purchase the equity interest or tax credit, or both, in accordance with the company's governing documents.

(4) Equity interests purchased under subdivision (b)(2) of this section shall be cancelled, and equity interests in lieu thereof may be reissued and sold by the company.

(5) If the governing board approves the transfer, then the equity interest or tax credit, or both, may be transferred.

History. Acts 1985, No. 410, § 13; A.S.A. 1947, § 67-1639; Acts 2003, No. 860, § 6; 2005, No. 1759, § 2.

Amendments. The 2005 amendment rewrote (b)(2), which formerly read: "The

governing board shall have thirty (30) days from the date of receipt of the name or names of the proposed transferees and the terms of the proposed transfer to approve the transfer."

15-4-1016. Powers.

(a) The purposes of each capital development company shall be to:

(1) Promote, stimulate, develop, and advance the business prosperity and economic welfare of the State of Arkansas and its citizens;

(2) Encourage and assist through loans, investments, or other business transactions in the location of new business and industry in this state and to assist the growth and expansion of existing business and industry;

(3) Stimulate and assist in the expansion of all kinds of business activity that will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state and, similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of knowledge-based industry, venture capital, and biotechnology and cultural, industrial, technological, scientific, commercial, agricultural, economic, and recreational development in this state;

(4) Provide financing for the promotion, development, and conduct of all kinds of business activity in this state, including new businesses

developed through colleges and universities located in the state and businesses owned by women and minorities; and

(5) Foster the flow of development capital throughout the state.

(b) In furtherance of the purposes stated in subsection (a) of this section and in addition to any powers granted by the applicable business law under which it was formed, each company shall have the power:

(1) To sue and be sued, complain, and defend in its own name;

(2) To have perpetual succession unless a limited period of duration is stated in its articles;

(3) To adopt a seal, which may be altered at pleasure, and to use it or a facsimile thereof as permitted by law;

(4) Within the limitations hereinafter imposed and in the manner hereinafter prescribed, to borrow money and otherwise contract indebtedness, to issue its bonds, notes, debentures, or other obligations with or without security and if with security, to secure the payment thereof by mortgage, pledge, or deed of trust on all or any part of its property, assets, revenues, or income;

(5) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any real and personal property or any interest therein;

(6) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property or assets;

(7) To make loans to any person and to establish and regulate the terms and conditions with respect to any loans and the charges for interest and service connected therewith, consistent with the provisions of this subchapter;

(8) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of bonds, securities, or evidences of indebtedness created by any individual or by any other capital development company, corporation, limited liability company, partnership, unincorporated association, trust estate, improvement district, or other entity or any governmental or municipal agency of any character;

(9) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of equity interests of any other entity or entities of this or any other state or government, subject to restrictions and limitations, if any, as may be imposed by the laws of this or any other state in which the company may do business and, while owner of an equity interest, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(10) To make any contracts necessary or convenient for the exercise of the powers granted in this subchapter;

(11) To elect or appoint managers, officers, agents, and employees of the company and to define their duties and fix their compensation;

(12) To conduct its business and to have offices within or without the state;

(13) To accept gifts or grants of money, service, or real or personal property;

(14) With the approval of the board and by action of the governing board of the company, to make and alter governing documents in a manner not inconsistent with the articles or with the laws of this state for the administration and regulation of the affairs of the company;

(15) To encourage and promote the cultural, industrial, technological, scientific, commercial, agricultural, knowledge-based industry, venture capital, biotechnology, economic, and recreational development of the State of Arkansas;

(16)(A) To assist minority-owned and women-owned businesses in obtaining loans, venture capital, or other means of financial assistance.

(B) The terms and conditions of loans, venture capital investments, or financial assistance, including the charges for interest and other services, shall be consistent with the provisions of this subchapter.

(C) In order to comply with this requirement, efforts must be made to solicit for review and analysis proposed minority-owned and women-owned business ventures.

(D) The company's investment policies and underwriting standards may not be waived to inconsistently favor minority-owned or women-owned businesses;

(17) With the approval of the board, to make loans to or investments in entities that do not own property or do not have employees located in this state if the loan or investment satisfies one (1) or more of the purposes stated in subsection (a) of this section; and

(18) To do and perform any and all acts and things and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the company is organized.

History. Acts 1985, No. 410, § 14;
A.S.A. 1947, § 67-1640; Acts 2003, No.
860, § 6.

15-4-1017. Dividends and distributions.

Subject to any limitations as may be stated in the articles or governing documents thereof, the governing board of the capital development company may declare dividends and make partial distributions of its capital under the applicable business law under which it was formed.

History. Acts 1985, No. 410, § 15;
A.S.A. 1947, § 67-1641; Acts 2003, No.
860, § 6.

Cross References. Arkansas Business Corporation Act of 1987, § 4-27-101 et seq.

15-4-1018. Bonds or notes of the company.

(a) From time to time as the conduct of its business requires, any capital development company may issue and sell bonds or notes at a price and on terms determined by the governing board.

(b) The bonds or notes of the capital development company shall be executed by the authorized officers of the company.

History. Acts 1985, No. 410, § 18; A.S.A. 1947, § 67-1644; Acts 2003, No. 860, § 6.

15-4-1019. Authority of other corporations and financial institutions.

(a) Notwithstanding any rule at common law or any provision of law or any provision in their respective articles of incorporation, all for-profit and nonprofit entities, including any public utility, company organized under the County and Regional Industrial Development Company Act, § 15-4-1201 et seq., financial institution, pension fund, and all trusts, may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, notes, or other evidence of indebtedness created by, or the equity interests or other securities of, a capital development company.

(b) The owner of an equity interest or other security may exercise all the rights, powers, and privileges of ownership, including the right to vote.

(c) Any of the actions in subsection (a) or (b) of this section may be taken by the owner of an equity interest or other security without the approval of any regulatory authority of the state.

History. Acts 1985, No. 410, § 19; A.S.A. 1947, § 67-1645; Acts 2003, No. 860, § 6.

15-4-1020, 15-4-1021. [Repealed.]

Publisher's Notes. These sections, concerning loan limits for member financial institutions and withdrawal of members, were repealed by Acts 2003, No. 860, § 7. They were derived from the following sources:

15-4-1020. Acts 1985, No. 410, § 20; A.S.A. 1947, § 67-1646.

15-4-1021. Acts 1985, No. 410, § 21; A.S.A. 1947, § 67-1647.

15-4-1022. Compliance with the Arkansas Securities Act.

The equity interests, notes, debentures, bonds, and all other securities or obligations issued by any capital development company shall be issued in compliance with and are subject to the provisions of the Arkansas Securities Act, § 23-42-101 et seq.

History. Acts 1985, No. 410, § 22; A.S.A. 1947, § 67-1648; Acts 2003, No. 860, § 8.

15-4-1023. Obligations as negotiable instruments.

All bonds, notes, debentures, and other similar obligations of a capital development company authorized under and issued in compliance with the provisions of this subchapter shall be and shall have and are declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state.

History. Acts 1985, No. 410, § 23; A.S.A. 1947, § 67-1649; Acts 2003, No. 860, § 8. **Cross References.** Negotiable instruments, § 4-3-101 et seq.

15-4-1024. Eligibility for certain investments.

Any agency or instrumentality of this state or city or town in this state or any board, commission, or other authority duly established by ordinance of any city or town or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any city or town may invest any of its funds not immediately needed for its purposes in the bonds, notes, or equity interests of any capital development company.

History. Acts 1985, No. 410, § 24; A.S.A. 1947, § 67-1650; Acts 2003, No. 860, § 8.

15-4-1025. Exemption from certain taxes.

(a)(1) The income of a capital development company shall be exempt from taxation under the Income Tax Act of 1929, § 26-51-101 et seq., and from the payment of any other income taxes levied by a county or a municipality.

(2) Dividends, distributions, and income allocable to the equity interests of any company shall be exempt from all state, county, or municipal income tax.

(3) Interest on bonds, notes, or other obligations of any company issued under and in accordance with the provisions of this subchapter shall be exempt from all state, county, or municipal income taxes.

(b) Each company shall file an income tax return each year at the time provided for the filing of tax returns in the Income Tax Act of 1929, § 26-51-101 et seq.

(c) Each company claiming exemption from income tax under this section shall attach to the return required in subsection (b) of this section a certification from the Bank Commissioner stating that the company has been organized and is operating as a capital development company in accordance with the provisions of this subchapter.

History. Acts 1985, No. 410, § 25; A.S.A. 1947, § 67-1651; Acts 2003, No. 860, § 8.

15-4-1026. Tax credit.

(a)(1) Subject to the limitations contained in this section, a person who purchases an equity interest in a capital development company in any of the calendar years 2003 — 2015 is entitled to a credit against any state income tax liability or premium tax liability that may be imposed on the purchaser for any tax year commencing on or after the date of the purchase.

(2) However, within eighteen (18) months after receipt of the proceeds from the purchase of an equity interest in a company, the proceeds must be used in one (1) or more of the transactions described in subdivision (a)(3) of this section and for the purposes stated in § 15-4-1016 or for operating expenses.

(3) Upon satisfaction of the conditions in subdivisions (a)(1) and (2) of this section, use of proceeds from the purchase described in subdivision (a)(1) of this section in the following transactions shall cause the purchaser to be eligible for the tax credit under subdivision (a)(1) of this section:

(A) Transactions in which one (1) or more persons purchase equity interests in a capital development company to create a pool of capital available for investment in entities approved by the capital development company's governing board;

(B) Transactions in which one (1) or more persons purchase equity interests in a capital development company and the proceeds of the purchases are invested by the capital development company at the direction of the purchasers into one (1) or more venture capital funds or private equity funds that have investment policies which conform to all or a portion of the capital development company's investment policy, if the governing board reviews and does not object to the use of the proceeds by the funds; and

(C) Transactions in which:

(i) A capital development company enters into an agreement with an entity approved by the governing board of the company;

(ii) The entity is required to identify the investors who will invest in the entity;

(iii) Receipt of the tax credit is contingent upon the investors' actually investing in the entity through the company; and

(iv) The governing board of the company determines that the entity would not be able to raise the funds needed for the entity's business without a tax credit.

(b) The credit shall be determined in the following manner:

(1)(A) The credit shall be equal to thirty-three and one-third percent (33⅓%) of the actual purchase price paid for the equity interest to the company, which shall include any fees or commissions to underwriters or sales agents paid by the company.

(B)(i) However, the total amount of fees and commissions to underwriters or sales agents for which a credit may be taken shall not exceed fifteen percent (15%) of the actual purchase price.

(ii) No fees or commissions in excess of fifteen percent (15%) of the total purchase price may be considered in calculating the amount of the credit determined in this section;

(2) In any one (1) tax year, the credit allowed by this section shall not exceed fifty percent (50%) of the net Arkansas state income tax liability or premium tax liability of the taxpayer after all other credits and reductions in tax have been calculated;

(3)(A) Any credit in excess of the amount allowed by subdivision (b)(2) of this section for any one (1) tax year may be carried forward and applied against Arkansas state income tax or premium tax for the next-succeeding tax year and annually thereafter for a total period of eight (8) years next succeeding the year in which the equity interest in a company was purchased, subject to the provisions of subdivision (b)(2) of this section or until the credit is exhausted, whichever occurs first.

(B) In no event may the credit allowed by this section be allowed for any tax year ending after December 31, 2021; and

(4) An original purchaser of equity interests who seeks to qualify for the income tax credit or premium tax credit provided in this section must obtain and attach to the income tax return or premium tax return for the years the credit is claimed a certified statement from the company stating:

(A) The name and address of the original purchaser;

(B) The tax identification number of the person entitled to the credit;

(C) The original date of purchase of the equity interest;

(D) The number and type of equity interests purchased;

(E) The amount paid by the original purchaser for the equity interest;

(F) The amount of the tax credit associated with the purchase of the equity interest; and

(G) The amount of dividends and distributions previously paid by the company to the purchaser.

(c)(1) A transferee from an original purchaser is entitled to the tax credit described in this section only to the extent the credit is still available to and has not previously been used by the transferor.

(2) A transferee of equity interests or tax credits who seeks to qualify for the income tax credit or premium tax credit provided in this section must obtain and attach to the income tax return or premium tax return for the years the credit is claimed a certified statement from the company stating:

(A) The name and address of the original purchaser and all transferees;

(B) The tax identification number of all persons entitled to any portion of the original tax credit;

(C) The original date the equity interest was purchased;

(D) The number and type of equity interests purchased;

(E) The amount paid by the original purchaser for the equity interest;

(F) The amount of the tax credit associated with the purchase of the equity interest;

(G) The amount of the tax credit associated with the original purchase used by all previous owners of the equity interest or tax credit and the remaining amount of the tax credit available for use by the transferee; and

(H) The amount of dividends and distributions previously paid by the company to the original purchaser and all transferees.

(d)(1) If the owner of an equity interest in or a tax credit issued by a company is a pass-through entity for tax purposes, such as a limited liability company or a partnership, then the owner of the pass-through entity is entitled to the tax credit described in this section.

(2) If a pass-through entity entitled to a tax credit under subdivision (d)(1) of this section is owned by two (2) or more persons, then the tax credit may be allocated among the pass-through entity owners in the method selected by the owners as described in the governing documents of the pass-through entity or by other written agreement among the owners.

(e)(1) For the purpose of ascertaining the gain or loss from the sale or other disposition of an equity interest in a company, the owner of the equity interest shall reduce his or her basis in the equity interest by the amount of the tax credits previously deducted under this section.

(2) However, sale or other disposition under subdivision (e)(1) of this section does not include a transfer from the holder of an equity interest to the company in liquidation of the equity interest.

(3) This reduced basis shall be used by the original purchaser or transferee when calculating tax due under the Income Tax Act of 1929, § 26-51-101 et seq.

(f)(1) If any of the proceeds from the purchase of equity interests in a company are not used for the purposes stated in § 15-4-1016 or for operating expenses within eighteen (18) months after receipt, then for each person who previously claimed a tax credit under this section with respect to that purchase, the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for the year in which the eighteen-month period ends shall be increased by the tax credit amount associated with the unused purchase proceeds.

(2) Within thirty (30) days after the expiration of the eighteen-month period, the company shall notify each person who claimed a tax credit under this section and the Department of Finance and Administration of the failure to use the proceeds and the tax recapture amount associated with the failure.

(g)(1) Except as provided in subdivision (g)(2) of this section, the total cumulative amount of tax credits available to all purchasers of equity interest in capital development companies under this section in any calendar year shall not exceed five million dollars (\$5,000,000).

(2) For any calendar year, the maximum tax credit under subdivision (g)(1) of this section may be increased by an additional amount not to exceed one million two hundred fifty thousand dollars (\$1,250,000) by

the Director of the Department of Finance and Administration if a capital development company requests the increase and the requirements of subdivision (g)(3) of this section are met.

(3) By August 15 of the calendar year for which the maximum tax credit increase is requested, the director shall:

(A) Determine:

(i) The total amount of tax credits first claimed under this section during the most recent fiscal year;

(ii) The total amount of tax credits claimed under this section by all taxpayers during the most recent fiscal year; and

(iii) Based upon the amounts calculated under subdivisions (g)(3)(A)(i) and (ii) of this section, the estimated amount of tax credits that may be claimed under this section during the fiscal year that began on the most recent July 1;

(B) Based on the most recent revenue forecast and budget information, determine:

(i) The fiscal impact of the estimated tax credits under subdivision (g)(3)(A) of this section on the amount of general revenues available for distribution under § 19-5-202 for the fiscal year that began on the most recent July 1, including amounts to be distributed for the support of public schools; and

(ii) The fiscal impact of increasing the maximum tax credit under subdivision (g)(2) of this section on the amount of general revenues available for distribution under § 19-5-202 for the fiscal year that began on the most recent July 1, including amounts to be distributed for the support of public schools; and

(C) Certify the amount, if any, that the maximum tax credit shall be increased under subdivision (g)(2) of this section such that the resulting estimated amount of general revenues available for distribution under § 19-5-202 for the fiscal year that began on the most recent July 1, including amounts to be distributed for the support of public schools, is sufficient to meet the budgeted needs of state agencies and public schools funded by general revenues.

(h)(1) No capital development company shall enter into an agreement or a commitment for the purchase by any person of equity interests in the capital development company on or after July 1, 2007.

(2) However, all agreements and commitments of the capital development company related to the purchase of equity interests in existence before July 1, 2007, and certified to the Arkansas Economic Development Commission shall remain valid and enforceable, shall be entitled to the tax credits set forth in this section, and shall be completed in accordance with their respective terms.

History. Acts 1985, No. 410, § 26; A.S.A. 1947, § 67-1652; Acts 1991, No. 333, § 1; 2003, No. 860, § 8; 2005, No. 1232, § 4; 2005, No. 1759, §§ 3, 4; 2007, No. 566, §§ 2, 3.

A.C.R.C. Notes. Pursuant to § 1-2-

207, this section is set out above as amended by Acts 2005, No. 1759. Subsection (a) of this section was amended by Acts 2005, No. 1232 to read as follows: "(a)(1) A person who purchases an equity interest in a capital development com-

pany in any of the calendar years 2003 - 2013 is entitled to a credit against any state income tax liability or premium tax liability that may be imposed on the purchaser for any tax year commencing with the tax year that the purchase is made.

"(2) However, within eighteen (18) months after receipt of the proceeds from the purchase of an equity interest in a company, the proceeds must be used for the purposes stated in § 15-4-1016 or for operating expenses."

Acts 2005, No. 1232, § 1, provided: "Legislative intent.

"(a) Accelerate Arkansas, a statewide group of volunteers whose mission is to foster economic growth in Arkansas by raising the average Arkansas wage to the level of the national average wage by using the essential building blocks of the knowledge-based economy to create an environment supporting entrepreneurship and continuous innovation, developed its five-point strategy to increase per capita income:

"(1) Support research and development that creates jobs;

"(2) Provide incentives that make risk capital available in the funding gap;

"(3) Encourage entrepreneurship and new enterprise development;

"(4) Sustain successful existing companies; and

"(5) Increase achievement in science, technology, engineering, and mathematics education.

"(b) These core strategies focus on the economic building blocks of research, entrepreneurship, risk capital, and the science and engineering workforce.

"(c) These core strategies are consistent with and supported by the findings in:

"(1) The Department of Economic Development's Report of the Task Force for the Creation of Knowledge-Based Jobs;

"(2) The Winthrop Rockefeller Foundation's Entrepreneurial Arkansas: Connecting the Dots; and

"(3) 'Arkansas' Position in the Knowledge-Based Economy', a report prepared

by the Milken Institute and the Center for Business and Economic Research at the University of Arkansas."

Acts 2007, No. 1602, § 1, provided:

"Department of Economic Development renamed Arkansas Economic Development Commission.

"(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

"(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

"(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 7, provided: "The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act."

Amendments. The 2005 amendment, in (a)(1), substituted "2015" for "2013" and "on or after" for "with the tax year that is two years after"; inserted "in one (1) or more of the transactions described in subdivision (a)(3) of this section and" in (a)(2); added (a)(3); substituted "2021" for "2019" in (b)(3)(B); and added (g).

The 2007 amendment substituted "Subject to the limitations contained in this section, a" for "A" in (a)(1); and added (h).

15-4-1027. Investment and loan policy.

(a) A capital development company shall not lend money when credit is readily available on comparable terms elsewhere.

(b)(1) The governing board of a company shall adopt an investment policy consistent with the provisions of this subchapter.

(2) The governing board shall deliver to the Bank Commissioner a copy of the company's investment policy within thirty (30) days after its adoption.

(c) No company under this subchapter shall receive money on deposit.

History. Acts 1985, No. 410, § 27; A.S.A. 1947, § 67-1653; Acts 2003, No. 860, § 8.

15-4-1028. Supervision of capital development companies.

(a) Each capital development company shall be subject to the supervision, examination, and control of the Bank Commissioner in the same manner, so far as applicable, as provided in § 23-46-501 et seq., and shall make reports of its condition to the commissioner as the commissioner shall prescribe, but the company shall not be deemed a financial institution.

(b) The commissioner shall have the power to:

(1) Make rules and regulations to regulate the safety and soundness of capital development companies;

(2) Conduct investigations that may be necessary to determine whether any person has engaged in or is about to engage in any act or practice constituting noncompliance with any provision of this subchapter or of other laws of this state; and

(3)(A) Classify as confidential records and information obtained by the State Bank Department from an investigation or examination by the department's staff under § 23-46-101.

(B) However, for purposes of this subchapter, applications for approval under § 15-4-1004 are public documents.

(c)(1) Whenever it appears, upon sufficient grounds or evidence satisfactory to the commissioner, that any company has engaged in or is about to engage in any act or practice that is noncompliant with this subchapter or any rule, regulation, or order under this subchapter or that the assets or capital of any company is impaired or a company's affairs are in an unsafe condition, the commissioner may:

(A) Refer the evidence that is available concerning noncompliance with this subchapter or any rule, regulation, or order under this subchapter to the appropriate agency; or

(B)(i) Summarily order the company to cease and desist from the act or practice during the time the commissioner may apply to the Pulaski County Circuit Court or the circuit court in the county in which the company is situated, has its principal office or place of business, or in which its chief officer resides to enjoin the act or practice and to enforce compliance with this subchapter or any rule, regulation, or order under this subchapter.

(ii) However, the commissioner may apply directly to Pulaski County Circuit Court or the circuit court in the county in which the

company is situated or has its principal office or place of business or in which its chief officer resides for injunctive relief without issuing a cease and desist order.

(2) Upon the entry of the order, the commissioner shall promptly notify the company that the order has been entered, of the reasons for the entry of the order, and of the right to a hearing on the order.

(3)(A) A hearing shall be held on the written request of the company aggrieved by the order if the request is received by the commissioner within thirty (30) days after the date of the entry of the order or if ordered by the commissioner.

(B) If no hearing is requested and none is ordered by the commissioner, the order shall remain in effect until it is modified or vacated by the commissioner.

(C) If a hearing is requested or ordered, the commissioner, after notice of and an opportunity for hearing, may affirm, modify, or vacate the order.

(4) Upon a proper showing, the circuit court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus and may appoint a receiver or conservator for the company or its assets.

(5) The circuit court shall not require the commissioner to post a bond.

(6) In addition to any other remedy provided in this subchapter or under other applicable law, the circuit court may impose as additional damages payable by the company the costs incurred by the commissioner in successfully pursuing acts of noncompliance with this subchapter.

(7) The commissioner shall forward a copy of all reports of the investigation or other proceedings conducted under this section to the Director of the Department of Finance and Administration.

(d) Each company shall deliver a quarterly report to the commissioner and the Department of Finance and Administration that describes each investment transaction made by the company in the previous quarter and the economic benefits and any tax credits allowed under this subchapter.

(e) Each company shall deliver an annual report to the commissioner and the Department of Finance and Administration within six (6) months after the close of its fiscal year that shall include an annual audit of the activities conducted by the company and shall list any tax credits allowed under this subchapter.

History. Acts 1985, No. 410, § 28; A.S.A. 1947, § 67-1654; Acts 2003, No. 860, § 8; 2005, No. 1994, § 300.

Amendments. The 2005 amendment substituted "noncompliance" for "a violation" in (b)(2); substituted "that is non-

compliant" for "in violation" in (c)(1); substituted "noncompliance" for "violations" in (c)(1)(A); and substituted "pursuing acts of noncompliance" for "prosecuting nonviolations" in (c)(6).

15-4-1029. Dissolution.

(a) A capital development company may dissolve in accordance with the applicable business law under which it was formed.

(b) In connection with a dissolution under subsection (a) of this section, a certificate of dissolution shall be signed by the authorized officers of the company and delivered to the Bank Commissioner.

(c) The certificate of dissolution shall be filed and recorded in the same manner as the original articles. As soon as the commissioner has accepted and endorsed on the certificate of dissolution his or her approval thereof, the company shall be deemed to be dissolved.

(d) However, the company shall be continued for the purpose of paying, satisfying, and discharging any other existing liabilities or obligations and collecting or liquidating its assets and doing all other acts required to adjust and conclude its business and affairs and may sue and be sued in its own name.

(e) Any assets remaining after all liabilities or other obligations of the company have been satisfied or discharged shall be distributed in accordance with the applicable business law under which it was formed and the company's governing documents.

(f)(1) Upon dissolution, if any proceeds from the purchase of an equity interest in a company have not been used for the purposes stated in § 15-4-1016 or for operating expenses, then for each person who previously claimed a tax credit under § 15-4-1026 with respect to that purchase, the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for the year in which dissolution occurs shall be increased by the tax credit amount associated with the unused purchase proceeds.

(2) Within thirty (30) days after dissolution, the company shall notify each person who previously claimed a tax credit and the Department of Finance and Administration of a failure to use the proceeds and the tax recapture amount associated with the failure.

(g)(1) If authority to receive tax credits pursuant to this subchapter is terminated prior to December 31, 2015, or if a capital development company is dissolved, then the capital development company may assign the administration of any outstanding tax credits to the Arkansas Economic Development Council or its successor.

(2)(A) If the governing board of a capital development company approves an agreement for the purchase by any person of equity interests in the capital development company upon satisfaction of the conditions in the agreement and the agreement is approved prior to December 31, 2015, then the agreement shall remain valid and enforceable.

(B) However, the person entering into the agreement described in subdivision (g)(2)(A) of this section shall not receive any tax credits for the purchase of an equity interest in the capital development company that occurs after December 31, 2015.

(C) The capital development company shall remain in existence until the purchases of equity interests contemplated by this subsection are completed.

History. Acts 1985, No. 410, § 17; A.S.A. 1947, § 67-1643; Acts 2003, No. 860, § 8; 2005, No. 1759, § 5. **Amendments.** The 2005 amendment added (g).

15-4-1030. Merger.

(a) Subject to the provisions of this subchapter, a capital development company may merge or consolidate with or into another capital development company, a development finance corporation, a company organized under the County and Regional Industrial Development Company Act, § 15-4-1201 et seq., a financial institution, or any other entity.

(b)(1) Each entity that is a party to a merger or consolidation shall adopt articles of merger or consolidation in accordance with the applicable business law under which it was formed and shall file the articles with the Bank Commissioner.

(2) The commissioner shall issue a certificate approving the articles of merger or consolidation if the articles of merger or consolidation are acceptable to the commissioner.

(3) The articles of merger or consolidation are effective when the commissioner issues the certificate of approval.

(4) The company shall record the articles of merger or consolidation and the commissioner's certificate of approval in the same manner as the original articles.

History. Acts 2003, No. 860, § 9.

15-4-1031. Application of business laws.

(a) Each capital development company is subject to the provisions of any applicable business law under which it was formed, as now or hereafter amended, to the extent that those provisions are not in conflict with the provisions of this subchapter.

(b) If a provision of an applicable business law is in conflict with any provision of this subchapter, then the provisions of this subchapter shall control.

History. Acts 2003, No. 860, § 9.

SUBCHAPTER 11 — STEEL MILL TAX INCENTIVES

SECTION.

15-4-1101 — 15-4-1104. [Repealed.]

15-4-1101 — 15-4-1104. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2005, No. 1962, § 57. The subchapter was derived from the following sources:

15-4-1101. Acts 1987, No. 48, § 1.

15-4-1102. Acts 1987, No. 48, § 1; 1997, No. 540, § 80.

15-4-1103. Acts 1987, No. 48, § 3.

15-4-1104. Acts 1987, No. 48, § 5; 1987, No. 575, § 3; 1997, No. 540, § 81.

SUBCHAPTER 12 — COUNTY AND REGIONAL INDUSTRIAL DEVELOPMENT COMPANY ACT

SECTION.

- 15-4-1201. Title.
- 15-4-1202. Definitions.
- 15-4-1203. Liberal construction.
- 15-4-1204. Application for preliminary approval.
- 15-4-1205. Preliminary approval.
- 15-4-1206. Organization.
- 15-4-1207. Liability of directors, officers, managers, and members.
- 15-4-1208. Certificate of organization.
- 15-4-1209. Final investigation and approval by the board.
- 15-4-1210. Commencement and continuation of existence.
- 15-4-1211. Articles of incorporation or articles of organization.
- 15-4-1212. Amendment to articles of incorporation or articles of organization.
- 15-4-1213. Management of company.
- 15-4-1214. Powers of the company.
- 15-4-1215. Dividends and distributions.

SECTION.

- 15-4-1216. Bonds and notes of the company.
- 15-4-1217. Authority of other corporations and financial institutions.
- 15-4-1218. Member financial institutions — Loan limits.
- 15-4-1219. Withdrawal of members.
- 15-4-1220. Exemption for securities.
- 15-4-1221. Obligations as negotiable instruments.
- 15-4-1222. Eligibility for certain investments.
- 15-4-1223. Exemption from certain taxes.
- 15-4-1224. Tax credit.
- 15-4-1225. Loan policy.
- 15-4-1226. Supervision of companies.
- 15-4-1227. Dissolution of company.
- 15-4-1228. Investigations by Bank Commissioner or Securities Commissioner — Injunctions.

A.C.R.C. Notes. References to “this subchapter” in §§ 15-4-1201 — 15-4-1227 may not apply to § 15-4-1228 which was enacted subsequently.

Publisher’s Notes. Former subchapter 12, the County Industrial Development Corporation Act, was repealed by Acts 1991, No. 1029, § 30. The former subchapter was derived from the following sources:

- 15-4-1201. Acts 1989, No. 660, § 1.
- 15-4-1202. Acts 1989, No. 660, § 2.
- 15-4-1203. Acts 1989, No. 660, § 27.
- 15-4-1204. Acts 1989, No. 660, § 3.
- 15-4-1205. Acts 1989, No. 660, § 4.
- 15-4-1206. Acts 1989, No. 660, § 5.
- 15-4-1207. Acts 1989, No. 660, § 14.
- 15-4-1208. Acts 1989, No. 660, § 6.
- 15-4-1209. Acts 1989, No. 660, § 7.
- 15-4-1210. Acts 1989, No. 660, § 8.
- 15-4-1211. Acts 1989, No. 660, § 9.
- 15-4-1212. Acts 1989, No. 660, § 10.
- 15-4-1213. Acts 1989, No. 660, § 11.
- 15-4-1214. Acts 1989, No. 660, § 12.
- 15-4-1215. Acts 1989, No. 660, § 13.
- 15-4-1216. Acts 1989, No. 660, § 16.
- 15-4-1217. Acts 1989, No. 660, § 17.
- 15-4-1218. Acts 1989, No. 660, § 18.

- 15-4-1219. Acts 1989, No. 660, § 19.
- 15-4-1220. Acts 1989, No. 660, § 20.
- 15-4-1221. Acts 1989, No. 660, § 21.
- 15-4-1222. Acts 1989, No. 660, § 22.
- 15-4-1223. Acts 1989, No. 660, § 23.
- 15-4-1224. Acts 1989, No. 660, § 24.
- 15-4-1225. Acts 1989, No. 660, § 25.
- 15-4-1226. Acts 1989, No. 660, § 26.
- 15-4-1227. Acts 1989, No. 660, § 15.

Effective Dates. Acts 1991, No. 1029, § 31: Apr. 8, 1991. Emergency clause provided: “It has been found and it is hereby declared by the General Assembly of the State of Arkansas that the State of Arkansas has had heretofore an inadequate program for financing the agricultural, industrial, technological, scientific and economic development of the State, that on account of such inadequate program, the State of Arkansas has been unable to provide for its inhabitants sufficient opportunities in agriculture and industry, that on account thereof the State of Arkansas is threatened with a decreasing standard of living for its inhabitants, that unless an adequate program for financing the agricultural, industrial, technological, scientific and economic development of

the State be immediately undertaken, the State of Arkansas will suffer immediate and irreparable loss in population and the opportunity for agricultural and industrial expansion, and that only by the passage of this Act and giving immediate effect to its provisions, can the State of Arkansas prevent losses in population and securing to its inhabitants opportunities for agricultural, industrial, technological, scientific and economic development. An emergency therefore, is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 904, § 6: became law without Governor's signature. Noted Mar. 28, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that county and regional industrial development corporations are in need of additional regulatory protection; that, in order to protect Arkansas citizens that invest in these corporations, it is necessary that these corporations be required to operate in a safe and sound manner and in accordance with the laws of this state; and that it is necessary that this protection begin immediately. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 906, § 5: Mar. 27, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that securities issued by county or regional industrial development corporations are not subject to the regulation of the Arkansas Securities Act; and that, in order to protect the safety of investment in such corporations by Arkansas citizens, these securities should be subject to the Arkansas Securities Act and it is necessary that this protection begin immediately. Therefore an

emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 37, § 31: Feb. 10, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the various regional industrial development corporations established pursuant to Arkansas Code 15-4-1201 through 15-4-1228 have been most successful in accomplishing their purposes of promoting, stimulating, developing, and advancing the business prosperity and economic welfare of the county or region they serve; that such entities can even better serve their purposes as limited liability companies; that the state income tax credit provided in the present law for purchasers of common stock in such corporations expires and will not be allowed for any tax year ending after December 31, 1999; that this law permits such corporations to convert to limited liability companies, expands the tax credit to include premium taxes, permits tax credit arising under present law to be carried forward past 1999 and extends the expiration date for the tax credit allowance to December 31, 2006; and that these revisions of the County and Regional Industrial Development Corporation Act must be given effect immediately to assure that the entities established hereunder can continue to carry out their essential function of promoting and developing the economic prosperity of the counties and regions they represent. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall

become effective on the date the last house overrides the veto."

Program for Small Businesses, § 15-5-1101 et seq.

Cross References. Capital Access

15-4-1201. Title.

This subchapter shall be referred to and may be cited as the "County and Regional Industrial Development Company Act".

History. Acts 1991, No. 1029, § 1; 1999, No. 37, § 1.

15-4-1202. Definitions.

As used in this subchapter:

(1) "Bank Commissioner" means the Bank Commissioner of the State of Arkansas;

(2) "Board" means the State Banking Board;

(3) "Company" means a county or regional industrial development corporation or limited liability company authorized to be organized under the provisions of this subchapter;

(4) "Financial institution" means any banking corporation or institution, trust company, savings bank, savings and loan association, insurance company, or related corporation, partnership, foundation, or other institution engaged in lending or investing funds;

(5) "Impaired" means, for the purposes of § 15-4-1228, that the capital of the company has been reduced to fifty thousand dollars (\$50,000) or less;

(6) "Loan limit" means, for any member, the maximum amount permitted to be outstanding at any one (1) time on loans made by the member to the company, as determined under § 15-4-1218;

(7) "Member" means any financial institution authorized to do business in the State of Arkansas which may undertake to lend money to a company upon its call and in accordance with the provisions of § 15-4-1218;

(8) "Person" includes all natural persons and legal entities;

(9) "Region" means any compact area composed of no fewer than three (3) nor more than fifteen (15) contiguous counties within the State of Arkansas;

(10) "Securities Commissioner" means the Securities Commissioner of the State of Arkansas; and

(11) "Unit of interest" means a participation in the profits interests of a limited liability company so that the total of all the units of interest in a limited liability company shall equal one hundred percent (100%) of the profits interests in the limited liability company.

History. Acts 1991, No. 1029, § 2; 1999, No. 37, § 2.

15-4-1203. Liberal construction.

(a) This subchapter shall be construed liberally.

(b) The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History. Acts 1991, No. 1029, § 27.

15-4-1204. Application for preliminary approval.

Any five (5) or more qualified natural persons who shall be bona fide residents of the same county or region in this state to be served by the proposed company and who desire to associate themselves for the purpose of establishing and operating a company may subscribe, acknowledge, and file with the Bank Commissioner for preliminary approval proposed articles of incorporation in the case of a corporation and articles of organization and an operating agreement in the case of a limited liability company, in duplicate, as authorized by § 15-4-1211.

History. Acts 1991, No. 1029, § 3;
1999, No. 37, § 3.

15-4-1205. Preliminary approval.

(a) If the Bank Commissioner is satisfied that the applicants are bona fide residents of the county or region to be served by the proposed company, that the applicants have the confidence of their respective communities, that, in the case of a regional company, the proposed region constitutes a reasonably compact area with similar economic development needs, that public convenience and necessity require a company, and that the proposed articles of incorporation or articles of organization and operating agreement conform to the provisions of § 15-4-1211, the commissioner shall issue his or her certificate approving the articles of incorporation or articles of organization and operating agreement and authorizing the applicants to proceed with the organization of the company.

(b)(1) The commissioner shall not refuse a certificate to a regional company solely because one (1) or more county companies have been approved for the counties composing the region.

(2) Provided, however, only one (1) county industrial development company may be organized to serve in each individual county.

History. Acts 1991, No. 1029, § 4;
1999, No. 37, § 4.

15-4-1206. Organization.

Upon receipt of such certificate of preliminary approval, the applicants may proceed to complete the organization of the company, to obtain subscriptions for and payment of its stock or limited liability

units of interest, and to do all other things necessarily incidental to its transacting business.

History. Acts 1991, No. 1029, § 5;
1999, No. 37, § 5.

15-4-1207. Liability of directors, officers, managers, and members.

The directors and officers of a corporation organized under the provisions of this subchapter and the managers and members of a limited liability company organized under the provisions of this subchapter shall not be responsible for losses of assets of the company unless the losses shall have been occasioned by the willful misconduct of such directors, officers, managers, or members.

History. Acts 1991, No. 1029, § 14;
1999, No. 37, § 6.

15-4-1208. Certificate of organization.

(a) When the applicants have completed the organization of the proposed company, they shall file with the Bank Commissioner a certificate of organization executed by the chief executive officer of the company, attested by its chief financial officer, and with its seal affixed thereto, certifying:

(1) The names and addresses of all of its subscribers of stock or units of interest of a limited liability company, the number of shares subscribed or the amount of units of interest subscribed in the case of a limited liability company, and the number of shares fully paid for by each in the case of a corporation or the amount of units of interest fully paid for by each in the case of a limited liability company;

(2) The total number of shares of stock or units of interest of a limited liability company subscribed, but not fully paid for;

(3) The total number of shares of stock or units of interest paid in full;

(4) The name and address of the depository or the names and addresses of the depositories, if more than one (1), holding on deposit the funds of the company; and

(5) The names and addresses of the officers, directors, and members of the executive committee, if any, of a corporation and the names and addresses of the managers and members of the management committee of a limited liability company.

(b) The certificate of organization of the applicant shall be accompanied by the certificate of the named depository or by the certificates of the named depositories, if more than one (1), certifying the amount of the funds on deposit to the credit of the company.

(c) The certificate of organization shall also be accompanied by any bylaws or by any regulations which may have been adopted by the directors of a corporation or the operating agreement of a limited liability company.

History. Acts 1991, No. 1029, § 6;
1999, No. 37, § 7.

15-4-1209. Final investigation and approval by the board.

(a)(1) Immediately upon the filing of the certificate of organization by the applicants, the Bank Commissioner shall submit to the State Banking Board the proposed articles of incorporation, articles of organization and operating agreement, as appropriate, and the certificate of organization of the applicants.

(2) As soon as practicable thereafter, if the board shall determine from the best sources of information at its command that:

(A) Public convenience and necessity continue to require the company;

(B) The holders of the fully paid common stock of a corporation or units of interest of a limited liability company are at least twenty (20) in number;

(C) Not less than one hundred thousand dollars (\$100,000) of common stock or units of interest have been subscribed and fully paid for;

(D) No single stockholder nor related group of stockholders owns more than ten percent (10%) of the voting stock in the case of a corporation or no single member nor related group of members owns more than ten percent (10%) of the units of interest in the case of a limited liability company; and

(E) The bylaws submitted, if any, or the operating agreement is in conformity with the articles of incorporation or articles of organization and the provisions of this subchapter, is not contrary to the laws of the state, and is otherwise satisfactory,

the board shall direct the commissioner to issue to the applicants a certificate of incorporation or certificate of organization in such form as it may prescribe.

(b)(1) The commissioner shall also return to the applicants one (1) of the copies of the articles of incorporation or the articles of organization theretofore submitted to the commissioner by the applicants, upon which copy he or she shall have endorsed the fact of the issuance by him or her of the certificate of incorporation or certificate of organization.

(2) If the bylaws, regulations, or the operating agreement are submitted and are found to be satisfactory by the board, the commissioner shall also issue his or her certificate of approval.

History. Acts 1991, No. 1029, § 7;
1999, No. 37, § 8.

15-4-1210. Commencement and continuation of existence.

(a) Upon the issuance of the certificate of incorporation or certificate of organization by the Bank Commissioner, the existence of the company shall begin.

(b) The certificate of incorporation or certificate of organization shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed by the applicants have been complied with and that the company has been organized under this subchapter.

(c) A copy of the articles of incorporation or articles of organization so endorsed by the commissioner, as prescribed in § 15-4-1209, shall be filed for recordation in the office of the county clerk in the county in which the principal office of the company is located and a copy shall be delivered to the Director of the Department of Finance and Administration.

(d) The company shall pay to the commissioner in semiannual billings four hundred dollars (\$400) per year to establish and continue its existence and good standing under this subchapter.

History. Acts 1991, No. 1029, § 8;
1999, No. 37, § 9.

15-4-1211. Articles of incorporation or articles of organization.

(a) The articles of incorporation for any corporation or the articles of organization of any limited liability company organized under the provisions of this subchapter shall state:

(1) The name of the company, which shall include the words "County Industrial Development Company" if the proposed company is to serve a single county, or "Regional Industrial Development Company" if the proposed company is to serve a region larger than a single county, and such designation as may be appropriate to distinguish it from any subsequent company which may be organized under the provisions of this subchapter, and the name shall be such as to distinguish it from any other corporation, limited liability company, limited partnership, limited liability partnership, and limited liability limited partnership organized and existing under the laws of the State of Arkansas as evidenced by the Secretary of State in writing;

(2) The purpose for which the company is formed;

(3) The period of duration of the company, which for a corporation may be perpetual or limited, but which for a limited liability company must be for a stated term;

(4) The address of the principal office of the company and the name and address of its agent upon whom process may be served;

(5) The total number of shares of common stock that the corporation is authorized to issue, which number shall be not less than one hundred (100) shares of common stock, each share having a par value of one hundred dollars (\$100) in the case of a corporation or the total units of interest in the limited liability company that the limited liability company is authorized to issue, which number shall not be less than one hundred (100) units of interest, each unit of interest having a stated value of one hundred dollars (\$100);

(6) The total number of shares of stock of any other class or distinction which a corporation is authorized to issue and its par value,

if any, in the case of a corporation or the total number of units of other interests in a limited liability company that a limited liability company is authorized to issue and its stated value and preferences or limitations, if any;

(7) That no stockholder or member shall have preemptive rights with respect to any additional equity issued by the company or with respect to any debt issued by the company;

(8) That no stockholder shall be entitled to own more than ten percent (10%) of the total number of shares of voting stock issued at any time or that no member shall be entitled to own more than ten percent (10%) of the total units of interest of a limited liability company issued at any time;

(9)(A) In the case of a corporation, the number of directors, not fewer than six (6) nor more than fifteen (15), to be elected at the annual meeting of the holders of stock entitled to vote for the election of directors, in the case of a regional corporation, the requirement that at least one (1) director shall be a resident of each county composing the region and a prohibition of more than one-third ($\frac{1}{3}$) of the directors being residents of any single county, the terms of office of the directors, and any provisions desirable for staggering their terms of office.

(B) However, the terms of office of directors and other matters pertaining to the directors may be provided in the bylaws of the corporation;

(10)(A) In the case of a limited liability company, the number of members of the management committee, not fewer than six (6) nor more than fifteen (15), to be elected at the annual meeting of the members of the limited liability company entitled to vote for the election of the members of the management committee, in the case of a regional limited liability company, the requirement that at least one (1) member of the management committee shall be a resident of each county composing the region and a prohibition of more than one-third ($\frac{1}{3}$) of the members of the management committee being residents of any single county, the terms of office of the members of the management committee, and any provisions desirable for staggering their terms of office.

(B) However, the terms of office of members of the management committee and other matters pertaining to the members of the management committee may be provided in the operating agreement of the limited liability company;

(11) The names and addresses of the incorporators or organizers who shall constitute the board of directors or the management committee and manage the affairs of the company until the first meeting of the holders of the common stock or until the first meeting of the members of the limited liability company;

(12)(A) In the case of a limited liability company, that such an entity shall be a manager-managed limited liability company and shall be governed by a management committee elected by the holders of the units of interest of the limited liability company.

(B) The management committee shall appoint a chief operating officer, a chief financial officer, and such other officers as it deems appropriate;

(13)(A) In the case of a corporation, that the shares of the corporation shall be issued at such prices and with such rights and preferences as stated in the articles of incorporation, the bylaws, and as stated by the board of directors.

(B) In the case of a limited liability company, the ownership of the limited liability company shall be represented by units of interest that shall be issued at such prices and with such rights and preferences as stated in the articles of organization, the operating agreement, or as stated by the management committee of the limited liability company.

(C)(i) Stock and units of interest may be issued for consideration consisting of money paid, labor done, or property actually received, but neither promissory notes nor the promise of future services shall constitute valid consideration.

(ii) In all cases, shares or units of interest shall be issued at not less than the par value of one hundred dollars (\$100) per share or the stated value of one hundred dollars (\$100) per unit of interest; and

(14) Any provisions not inconsistent with law which the incorporators or organizers may choose to insert for the regulation of the business and the conduct of the affairs of the company.

(b) It shall not be necessary to set forth in the articles of incorporation or the articles of organization or the operating agreement any of the company powers enumerated in this subchapter.

History. Acts 1991, No. 1029, § 9;
1999, No. 37, § 10.

15-4-1212. Amendment to articles of incorporation or articles of organization.

(a) A company organized under the provisions of this subchapter may amend its articles of incorporation or its articles of organization by a majority vote of the common stock in the case of a corporation or by a majority vote of the units of interest of a limited liability company represented in person or by proxy at any regular meeting or at any special meeting of the holders of the common stock or members of the limited liability company called for that purpose.

(b) The power to amend shall include the power to accomplish any desired change in the provisions of the articles of incorporation or articles of organization and to include any purpose, power, or provision authorized to be included in the original articles of incorporation or articles of organization or by later amendment to this subchapter.

(c)(1) Articles of amendment signed by the chief executive officer and attested by the secretary, an assistant secretary, or another manager certifying to such an amendment and its lawful adoption shall be executed, acknowledged, and filed with the Bank Commissioner and,

when approved by the State Banking Board, recorded with the certificate of the commissioner approving the articles of amendment in the same manner as the original articles of incorporation or articles of organization.

(2) As soon as the commissioner shall issue his or her certificate of amendment, the amendment or amendments shall be in effect.

History. Acts 1991, No. 1029, § 10;
1999, No. 37, § 11.

15-4-1213. Management of company.

(a)(1) Only the holders of common stock, through the board of directors, shall manage the affairs of a corporation.

(2) Only holders of units of interest in a limited liability company shall manage the affairs of a limited liability company.

(3) Each holder of common stock or each holder of a unit of interest in the limited liability company shall be entitled to one (1) vote, in person or by proxy, for each share of common stock or each unit of interest held by him or her and, in voting for the directors or management committee of the company, shall be entitled to exercise the right of cumulative voting.

(b)(1)(A) In the event of the transfer of shares of common stock or units of interest, whether by act of the holder or by operation of law, the name or names of the proposed transferees shall be submitted to the directors of the corporation or to the management committee of the limited liability company and the directors or the management committee may refuse to approve the transfer, in which event the company shall have the option to purchase the shares of common stock or the units of interest at par or stated value.

(B) Shares of common stock or units of interest so purchased shall be cancelled, and shares or units in lieu thereof may be reissued and sold by the company.

(2) In the event that the directors or the management committee do not purchase the shares of common stock or the units of interest subject to transfer, the shares of common stock or the units of interest then may be transferred without the approval of the directors or the management committee.

History. Acts 1991, No. 1029, § 11;
1999, No. 37, § 12.

15-4-1214. Powers of the company.

(a) The purposes of each company organized under the provisions of this subchapter shall be to:

(1) Promote, stimulate, develop, and advance the business prosperity and economic welfare of the county or region where it is located and its citizens;

(2) Encourage and assist through loans, investments, or other business transactions in the location of new business and industry in that county or region, and to assist the growth and expansion of existing business and industry;

(3) Stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of the county or region, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of that county or region;

(4) Cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, technological, scientific, commercial, agricultural, and recreational development in that county or region; and

(5) Provide venture financing for the promotion, development, and conduct of all kinds of business activity in that county or region on terms and conditions that would not otherwise be available from existing financial institutions.

(b) In furtherance of such purposes, each company organized under this subchapter shall have the power to:

(1) Sue and be sued and to complain and defend in its corporate or limited liability company name;

(2) Have perpetual succession, in the case of corporations, unless a limited period of duration is stated in its articles of incorporation;

(3) Adopt a company seal, which may be altered at pleasure, and to use it or a facsimile thereof as permitted by law;

(4) Within the limitations imposed in this subchapter and in the manner prescribed in this subchapter, borrow money and otherwise contract indebtedness, to issue its bonds, notes, debentures, or other obligations with or without security, and, if with security, to secure the payment thereof by mortgage, pledge, or deed of trust on all or any part of its property, assets, revenues, or income;

(5) Purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property or any interest therein;

(6) Sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property or assets;

(7) Make loans to any qualifying person within its county or region and to establish and regulate the terms and conditions with respect to those loans and the charges for interest and service connected with those loans, consistent with the provisions of this subchapter;

(8) Purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of:

(A) Bonds, securities, or evidences of indebtedness created by any other corporation or corporations of this state or any other state or government or created by any individual, unincorporated association, limited liability company, limited partnership, general partnership, limited liability partnership, limited liability limited partnership, trust estate, improvement district, municipality, or governmental or municipal agency of any character;

(B) Shares of the capital stock of any other corporation or corporations of this or any other state or government, subject to such restrictions and limitations, if any, as may be imposed by the laws of this or any other state in which the corporation may do business, and, while owner of such stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote that stock; and

(C) The units of interest of limited liability companies, partnerships, joint ventures, or other business entities of this or any other state or government, subject to such restrictions and limitations, if any, as may be imposed by the laws of this or any other state in which the business entity may do business, and, while owner of such units of interest, to exercise all the rights, powers, and privileges of ownership, including the right to vote those units of interest;

(9) Make any and all contracts necessary or convenient for the exercise of the powers granted in this subchapter;

(10) Elect or appoint officers, agents, and employees of the company and to define their duties and fix their compensation;

(11) Conduct its business and to have officers within or without the state;

(12) Accept gifts or grants of money, service, or property, real or personal;

(13) With the approval of the board of directors or the management committee by action of those persons, make and alter bylaws and regulations not inconsistent with the articles of incorporation or the articles of organization and operating agreement or with the laws of this state for the administration and regulation of the affairs of the company;

(14) Encourage and promote the cultural, industrial, technological, scientific, economic, and recreational development of the county or region where it is located;

(15)(A) Assist minority businesses in obtaining loans or other means of financial assistance.

(B) The terms and conditions of such loans or financial assistance, including the charges for interest and other services, will be consistent with the provisions of this subchapter.

(C) Efforts must be made to solicit for review and analysis proposed minority business ventures.

(D) Be it further provided that basic loan underwriting standards will not be changed to inconsistently favor or disfavor minority persons or businesses, or both, from the intent of the company's lending practices; and

(16) Do and perform any and all acts and things and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the company is organized.

15-4-1215. Dividends and distributions.

(a) The directors of a corporation, subject to such limitations as may be set forth in the articles of incorporation or bylaws of the corporation, may declare dividends to the holders of its stock and make partial distribution of its capital surplus pursuant to the provisions of the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq.

(b) The management committee of a limited liability company, subject to such limitations as may be set forth in the articles of organization or the operating agreement, may declare distributions to the holders of the units of interest in the limited liability company consistent with the provisions of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq.

History. Acts 1991, No. 1029, § 13; Business Corporation Act, § 4-26-101 et seq.
1999, No. 37, § 14.

Cross References. The Arkansas

15-4-1216. Bonds and notes of the company.

(a)(1) From time to time as the conduct of its business requires, any company organized under the provisions of this subchapter may issue and sell at such price and on such terms as the board of directors or the management committee shall determine its bonds and notes not to exceed in a total aggregate amount outstanding at any one (1) time ten (10) times the total amount of its fully paid common stock or units of interest, its fully paid issued and outstanding preferred stock, if any, and the amount of its earned surplus in excess of a reserve set aside therefrom equal in amount to five percent (5%) of the aggregate total amount of loans of the company outstanding at any one (1) time.

(2) However, the validity of the bonds and notes of the company valued at the time of issuance and delivery shall not thereafter be affected if in excess of such ratio.

(b)(1) The bonds and notes of the company shall:

(A) Be in such form and denominations;

(B) Have such dates and maturities;

(C) Bear interest payable at such times and places within or without the state; and

(D) Contain such provisions as to registration of ownership if registration is deemed desirable, all as the directors of a corporation or the management committee of a limited liability company shall determine in conformity with the provisions of this subchapter.

(2)(A) The bonds and notes of the company shall be executed by the chief executive officer and chief financial officer of the company and be sealed with the company seal.

(B) In the event any of the officers whose signatures appear on any obligation shall cease to be officers before the delivery of those obligations, those signatures, nevertheless, shall be valid and sufficient for all purposes, the same as if they had remained in office until the delivery.

(c) All bonds and notes of a company issued under the provisions of this subchapter, unless otherwise limited by the express provisions thereof and irrespective of the date of issue, shall be on a parity as to security and shall be secured by a lien on the entire assets of the company. The lien shall be a first lien and superior to all other debts and to all other encumbrances of whatsoever nature on all of the assets of the company.

(d) In the discretion of the directors of the corporation, the earned surplus of a corporation, in whole or in part, may be invested as provided in the bylaws of the corporation and retained in reserve to meet losses and contingencies of the corporation.

(e) The undistributed earnings of a limited liability company, in whole or in part, in the discretion of the management committee of a limited liability company, may be invested as provided in the operating agreement of the limited liability company and retained in reserves to meet losses and contingencies of the limited liability company.

History. Acts 1991, No. 1029, § 16;
1999, No. 37, § 15.

15-4-1217. Authority of other corporations and financial institutions.

Notwithstanding any rule at common law or any provision of law or any provision in their respective articles of incorporation:

(1) All domestic corporations, including nonprofit corporations and associations, organized for the purpose of carrying on business within this state, including, without implied limitation, any public utility, and all trusts, are authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, notes, securities, or other evidences of indebtedness created pursuant to this subchapter or the shares of the common stock or the units of interest of a company organized under this subchapter and, while owners of the stock or units of interest, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;

(2) All financial institutions are authorized to become members of the company and to make loans to the company as provided in this subchapter;

(3) A financial institution which does not become a member of the company shall not be permitted to acquire any shares of the common stock or units of interest of the company; and

(4)(A)(i) Each financial institution which becomes a member of the company is authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, notes, securities, or other evidences of indebtedness created pursuant to this subchapter or the shares of the common stock or the units of interest of the company and, while owners of the stock or units of interest, to exercise all the rights, powers, and privileges of owner-

ship, including the right to vote thereon, all without the approval of any regulatory authority of the state.

(ii) However, the amount of the common stock of a corporation or the units of interest of a limited liability company which may be acquired by any member pursuant to the authority granted in this section shall not exceed ten percent (10%) of the loan limit of each member.

(B) The common stock or the units of interest of a company organized under this subchapter which any member is authorized to acquire pursuant to the authority granted in this section is in addition to the amount of common stock in corporations or units of interest in other business entities which the member may otherwise be authorized to acquire.

History. Acts 1991, No. 1029, § 17;
1999, No. 37, § 16.

15-4-1218. Member financial institutions — Loan limits.

(a) Any financial institution may request membership in the company by making application to the board of directors or the management committee on such form and in such manner as the board of directors or the management committee may require, and membership shall become effective upon the acceptance of the application by the board of directors or the management committee.

(b) Each member of the company may make loans to the company as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors or the management committee, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest to the amount computed in accordance with the provisions of this section;

(2) No loan to a company organized under this subchapter shall be made by members pursuant to a call made by the company if immediately thereafter the total amount of the loans will exceed ten (10) times the amount then paid in on the outstanding stock or the units of interest of the company plus ten (10) times the earned surplus of a corporation less reserves or ten (10) times the undistributed earnings of a limited liability company less reserves;

(3) The total amount outstanding on loans to a company made by any member at any one (1) time, when added to the amount of the investment in the capital stock or the units of interest of the company then held by that member, shall not exceed the limitation on loans established by law or regulation applicable to the member or, in the absence of any limitation, the amount approved by the board of directors or the management committee for that member;

(4)(A) Each call made by the company may be prorated among members of a company in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members.

(B) The adjusted loan limit of a member shall be the amount of the member's loan limit, reduced by the balance of outstanding loans made by the member to the company and the investment in capital stock of a corporation or units of interest in a limited liability company held by the member at the time of the call, and further reduced, in the case of a member who has assumed the obligation of a financial institution withdrawn from membership pursuant to § 15-4-1219(a)(2), by the balance of outstanding loans made to the company by the financial institution; and

(5) All loans to a company by members shall be evidenced by bonds, debentures, notes, or other evidence of indebtedness of the company which shall be freely transferable at all times and which shall bear interest at a rate which may be adjusted from time to time in a manner determined by the board of directors or the management committee. The rate shall not be less than one-quarter of one percent (0.25%) in excess of the prime or base rate of interest prevailing at the time of the adjustment for commercial banks in the City of Little Rock on unsecured commercial loans.

History. Acts 1991, No. 1029, § 18;
1999, No. 37, § 17.

15-4-1219. Withdrawal of members.

(a)(1) Membership in a company shall be for an indeterminate period not to exceed the termination date of the company stated in its articles of incorporation or articles of organization.

(2) Provided, however, that:

(A) Upon written notice given to a company five (5) years in advance, a member may withdraw from membership in the company at the expiration date of the notice; or

(B)(i) In the event that a member, herein called a "constituent member", shall consolidate with, merge into, or sell all or substantially all of its property and assets to another financial institution, herein called the "continuing institution", the board of directors or the management committee may permit, in such manner as it determines, the withdrawal of the constituent member from membership in the company if the continuing institution at the time of the withdrawal is a member and has assumed any obligation of the constituent member to make loans to the company.

(ii) If the continuing institution is not a member prior to the consolidation, merger, or sale, the assumed obligation shall be discharged at the time the continuing institution becomes a member.

(b) A member shall not be obligated to make any loans to the company pursuant to calls made either before or after the withdrawal of the member.

History. Acts 1991, No. 1029, § 19;
1999, No. 37, § 18.

15-4-1220. Exemption for securities.

(a)(1) The stock, units of interest, notes, debentures, bonds, and all other securities or obligations issued by any company organized and existing under the provisions of this subchapter shall be exempt from the provisions of the Arkansas Securities Act, § 23-42-101 et seq.

(2) However, any company organized and existing under the provisions of this subchapter shall not be exempt from the following:

(A) The antifraud provisions of the Arkansas Securities Act, § 23-42-507;

(B) The criminal provisions for violation of the provisions found in § 23-42-104(a); and

(C) The civil remedies available for violation of the provisions found in § 23-42-106.

(b)(1) Notwithstanding the provisions of subsection (a) of this section, no company may offer its stock, units of interest, notes, debentures, bonds, or other securities or obligations without filing a notice with the Securities Commissioner before the first offer of the securities to be sold.

(2)(A) The filing shall state the terms of the offer and how the company intends to comply with the antifraud provisions of the Arkansas Securities Act, § 23-42-101 et seq., and shall be accompanied by copies of any sales materials the company will use in the offer of the securities.

(B) The filing shall be effective upon deposit with the Securities Commissioner.

(C) This filing requirement shall be applicable to the initial capitalization of the company and any subsequent offer of stock, units of interest, notes, debentures, bonds, or other securities or obligations or series thereof.

(c) Failure of a company to make the filing required by subsection (b) of this section shall be a basis for imposition of all remedies available to the Securities Commissioner for the offer and sale of unregistered and nonexempt securities under the Arkansas Securities Act, § 23-42-101 et seq.

History. Acts 1991, No. 1029, § 20; 1997, No. 906, § 1; 1999, No. 37, § 19.

15-4-1221. Obligations as negotiable instruments.

All bonds, notes, debentures, and other obligations of a company authorized under and issued in compliance with the provisions of this subchapter shall be, shall have, and are declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments laws of the state.

History. Acts 1991, No. 1029, § 21; 1999, No. 37, § 20.

15-4-1222. Eligibility for certain investments.

Any city or town in this state or any board, commission, or other authority duly established by ordinance of any such city or town or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any such city or town may invest any of its funds not immediately needed for its purposes in the bonds and notes of any company organized under the provisions of this subchapter.

History. Acts 1991, No. 1029, § 22;
1999, No. 37, § 21.

15-4-1223. Exemption from certain taxes.

(a)(1) County or regional industrial development companies shall be exempt from taxation under the Income Tax Act of 1929, § 26-51-101 et seq., and from the payment of any other income taxes levied by a county or a municipality.

(2) Dividends on stock or distributions with respect to units of interest of any such company pursuant to § 15-4-1215 shall be exempt from all state, county, or municipal income tax.

(3) Interest on bonds, notes, or other obligations of any company issued under and in accordance with the provisions of this subchapter shall be exempt from all state, county, or municipal income taxes.

(b) Corporations and limited liability companies shall file income tax returns each year at the time provided for the filing of corporate or partnership income tax returns, respectively.

(c) A company claiming exemption from income tax under this section shall attach to the return required in subsection (b) of this section a certification from the Bank Commissioner stating that the company has been incorporated or organized and is operating as a corporation or limited liability company in accordance with the provisions of this subchapter.

History. Acts 1991, No. 1029, § 23;
1999, No. 37, § 22.

15-4-1224. Tax credit.

(a)(1) The original purchaser of common stock of a corporation or a unit of interest of a limited liability company shall be entitled to a credit against any Arkansas income tax liability or premium tax liability which may be imposed on such a purchaser for any tax year commencing on or after January 1, 1999, for common stock purchased from a corporation or units of interest of a limited liability company and retained during any of the calendar years 1999-2003.

(2) The credit shall be determined in the following manner:

(A)(i)(a) The credit is an amount equal to thirty-three and one-third percent ($33\frac{1}{3}\%$) of the actual purchase price paid for the stock of a corporation to the corporation or for the units of interest of a

limited liability company to the limited liability company, which shall include any fees or commissions to underwriters or sales agents paid by the company.

(b) However, the total amount of fees and commissions to underwriters or sales agents for which a credit may be taken shall not exceed fifteen percent (15%) of the actual purchase price. Any fees or commissions in excess of fifteen percent (15%) of the total purchase price shall not be considered in calculating the amount of the credit determined in this section.

(ii) If any shares or units of interest, once purchased from the company, are then sold or otherwise disposed of prior to five (5) years elapsing from the date of purchase, the maximum amount of any credit shall be reduced a pro rata amount. In addition, any distribution from the company to the holder of the common stock or the unit of interest that is not a dividend or distribution within the meaning of § 15-4-1215 shall be deemed a sale of that portion of the original purchase price of the common stock or unit of interest on the date of such distribution for application of the credit reduction calculated under subdivision (a)(2)(A) of this section;

(B) In any one (1) tax year, the credit allowed by this section shall not exceed fifty percent (50%) of the net Arkansas state income tax or premium tax liability of the taxpayer after all other credits and reductions in tax have been calculated;

(C)(i) Any credit in excess of the amount allowed by subdivision (a)(2)(B) of this section for any one (1) tax year may be carried forward and applied against Arkansas state income tax or premium tax for the next-succeeding tax year and annually thereafter for a total period of three (3) years next succeeding the year in which the credit arose, subject to the provisions of subdivision (a)(2)(B) of this section, or until the credit is exhausted, whichever occurs first.

(ii) However, any credit arising under the County and Regional Industrial Development Company Act, § 15-4-1201 et seq., shall be allowed to be carried forward to years past December 31, 1999, subject to the three-year carry forward rules of subdivision (a)(2)(C) of this section.

(iii) In no event will the credit allowed by this section be allowed for any tax year ending after December 31, 2006; and

(D) Any original purchaser of common stock or units of interest who seeks to qualify for and maintain the income tax credit or premium tax credit provided in this section must obtain and attach to its annual income tax or premium tax return a certified statement from the company issuing the common stock or units of interest stating:

(i) The name and address of the original purchaser;

(ii) The number of shares or units of interest purchased;

(iii) The amount paid by the original purchaser for the common stock or units of interest, specifying what portion of the original purchase price consisted of fees or commissions to the underwriter or sales agent;

(iv) The date of purchase of the common stock or units of interest;
(v) The number of shares or units of interest of the original purchase still owned by the original purchaser; and

(vi) The amount and date of distributions made from the company to the purchaser and whether or not such distributions are ones made pursuant to § 15-4-1215.

(b)(1) For the purpose of ascertaining the gain or loss from the sale or other disposition of common stock in a corporation or units of interest in a limited liability company, the original purchaser of the common stock or the units of interest shall reduce his or her basis in the stock or units by the amount of the tax credits previously deducted under this section.

(2)(A) The original purchaser's basis in the stock or the units shall be further reduced by ten percent (10%) of the original purchase price for any shares of stock or any units of interest sold or otherwise disposed of before five (5) years have elapsed from the date of purchase.

(B) This reduced basis shall be used by the original purchaser when calculating tax due under the Income Tax Act of 1929, § 26-51-101 et seq.

History. Acts 1991, No. 1029, § 24; 1995, No. 363, § 1; 1995, No. 1044, § 1; 1999, No. 37, § 23.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1995, No. 1044. Subsection (a) of this section was also amended by Acts 1995, No. 363 to read as follows: "(a) The original purchaser of common stock of a corporation shall be entitled to a credit against any Arkansas income tax liability which may be imposed on such purchaser for any tax year commencing on or after January 1, 1991, for common stock purchased from the corporation and retained during any of the calendar years 1991, 1992, 1993, 1994, 1995, and 1996 to coincide with State Capitol Corporation. The credit shall be determined in the following manner:

"(1) The credit is limited to an amount not to exceed thirty-three percent (33%) of the actual purchase price paid for the stock to the corporation, which shall include any fees or commissions to underwriters paid by the corporation. If any shares, once purchased from the corporation, are then sold or otherwise disposed of prior to five (5) years elapsing from the date of purchase, the maximum amount of any credit shall be reduced a pro rata amount;

"(2) In any one (1) tax year, the credit allowed by this section shall not exceed

fifty percent (50%) of the net Arkansas state income tax liability of the taxpayer after all other credits and reductions in tax have been calculated;

"(3) Any credit in excess of the amount allowed by subdivision (a) (2) of this section for any one (1) tax year may be carried forward and applied against Arkansas state income tax for the next succeeding tax year and annually thereafter for a total period of three (3) years next succeeding the year in which the credit arose, subject to the provisions of subdivision (a) (2) of this section, or until the credit is exhausted, whichever occurs first. In no event will the credit allowed by this section be allowed for any tax year ending after December 31, 1998;

"(4) Any original purchaser of common stock who seeks to qualify for the income tax credit provided in this section must:

"(A) Obtain a certified statement from the corporation issuing the common stock stating:

"(i) The name and address of the original purchaser;

"(ii) The number of shares purchased;

"(iii) The amount paid by the original purchaser for the common stock;

"(iv) The date of purchase of the common stock; and

"(v) The number of shares of the original purchase still owned by the original purchaser; and

“(B) Attach a copy of the certificate described in subdivision (a)(4)(A) of this section to the income tax return for the years the credit is claimed.”

15-4-1225. Loan policy.

(a) A company organized under the provisions of this subchapter shall not lend money when credit is readily available with comparable terms elsewhere. Before granting a loan, the directors of a corporation or the management committee of a limited liability company shall endeavor so far as is reasonably possible to ascertain that reasonable opportunity to grant the loan has been given to the financial institutions of the state.

(b) No company organized under the provisions of this subchapter shall receive money on deposit.

(c) The company shall not deposit any of its funds in any banking institution unless the institution has been designated as a depository by a vote of a majority of the directors or a majority of the management committee present at an authorized meeting of the directors or the management committee, exclusive of any director or any member of the management committee who is an officer or director of the depository so designated.

History. Acts 1991, No. 1029, § 25;
1999, No. 37, § 24.

15-4-1226. Supervision of companies.

(a)(1) Each company organized under the provisions of this subchapter shall be subject to the general supervision and control of the Bank Commissioner.

(2) In addition to the other duties imposed upon them by law, the powers of the Bank Commissioner are to:

(A) Make reasonable rules and regulations which may be necessary to regulate the safety and soundness of the companies for making this subchapter effective;

(B) Conduct investigations which may be necessary to determine whether any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this subchapter or of the laws of this state;

(C) Conduct any examinations, investigations, and hearings which may be necessary and proper for the efficient administration of the county and regional industrial development company laws of this state and to charge the company for the expense of such examination, investigation, or hearing at the rate of two hundred twenty-five dollars (\$225) per examiner per day or partial day; and

(D)(i) Within the Bank Commissioner's discretion, classify as confidential certain records and information obtained by the State Bank Department when such matters are obtained from an investigation or examination by the department's staff.

(ii) However, applications shall be public documents.

(b) With respect to § 15-4-1220, each company organized under the provisions of this subchapter shall be subject to the specific regulation and control of the Securities Commissioner, who shall have the authority to:

(1) Make reasonable rules and regulations which may be necessary for making § 15-4-1220 effective;

(2) Conduct investigations and hearings which may be necessary to determine whether any person has engaged in or is about to engage in any act or practice constituting a violation of § 15-4-1220 and to charge the company for the expense of such an investigation or hearing at the rate of two hundred twenty-five dollars (\$225) per investigator per day or partial day;

(3) Conduct any examinations, investigations, and hearings which may be necessary and proper for the efficient administration and application of § 15-4-1220 to county and regional industrial development companies; and

(4) Within the Securities Commissioner's discretion, classify as confidential certain records and information obtained by the Securities Commissioner when such matters are obtained from an investigation or examination by the State Bank Department's staff.

History. Acts 1991, No. 1029, § 26;
1997, No. 904, § 1; 1999, No. 37, § 25.

15-4-1227. Dissolution of company.

(a) Any company organized under this subchapter, after the payment in full and cancellation of all its notes, bonds, and other obligations issued under the provisions of this subchapter or after the deposit in trust with the respective trustees designated in any deeds of trust given to secure the payment of any such obligations of a sum of money sufficient for the purpose, may dissolve by a vote of a majority of the common stock of a corporation or by a vote of a majority of the units of interest of a limited liability company, represented in person or by proxy, at any regular meeting or at any special meeting of the holders of the common stock of a corporation or the holders of the units of interest of a limited liability company called for that purpose.

(b) A certificate of dissolution shall be signed by the chief executive officer and attested by the chief financial officer certifying to the dissolution and stating that they have been authorized to execute and file the certificate by a vote cast in person or by proxy by holders of a majority of the common stock of a corporation or by holders of a majority of the units of interest of a limited liability company.

(c) The certificate of dissolution shall be executed, acknowledged, and filed and recorded in the same manner as the original articles of incorporation or articles of organization, and as soon as the Bank Commissioner shall have accepted and endorsed on the certificate of dissolution his or her approval thereof, the company shall be deemed to be dissolved.

(d)(1) However, the company shall be continued for the purposes of:

(A) Paying, satisfying, and discharging any other existing liabilities or obligations;

(B) Collecting or liquidating its assets; and

(C) Doing all other acts required to adjust and conclude its business and affairs.

(2) The company may sue and be sued in its corporate or limited liability company name.

(e) Any assets remaining after all liabilities or other obligations of the company have been satisfied or discharged shall be distributed pro rata first among the then-holders, if any, of any stock of a corporation or the then-holders, if any, of any units of interest of a limited liability company entitled to a preference, and the remaining assets of the company shall then be distributed pro rata among the then-holders of the common stock of a corporation or among the then-holders of the units of interest of a limited liability company not entitled to any such preferences.

(f) A copy of the certificate of dissolution as accepted and endorsed by the commissioner, as prescribed in subsection (c) of this section, shall be filed for recordation in the office of the county clerk in the county in which the principal office of the company is located, and a copy shall be delivered to the Director of the Department of Finance and Administration.

History. Acts 1991, No. 1029, § 15;
1999, No. 37, § 26.

15-4-1228. Investigations by Bank Commissioner or Securities Commissioner — Injunctions.

(a) The Bank Commissioner may investigate, either upon complaint or otherwise, when it appears that a county or regional industrial development company is conducting its business in an unsafe and injurious manner or in violation of this subchapter or the regulations promulgated under this subchapter by the Bank Commissioner or when it appears that any person is engaging in the business without being approved under the provisions of this subchapter.

(b) The Securities Commissioner may investigate, either upon complaint or otherwise, when it appears that a county or regional industrial development company is offering its securities in violation of § 15-4-1220 or is otherwise violating the provisions of Arkansas law that come under the jurisdiction of the Securities Commissioner.

(c)(1) Subject to the jurisdictional provisions of subsections (a) and (b) of this section, whenever it appears upon sufficient grounds or evidence satisfactory to the Bank Commissioner or the Securities Commissioner that any county or regional industrial development company has engaged in or is about to engage in any act or practice in violation of this subchapter or any rule or regulation or order under this subchapter, or the assets or capital of any county or regional industrial

development company is impaired or the county or regional industrial development company's affairs are in an unsafe condition, the Bank Commissioner or the Securities Commissioner may:

(A) Refer the evidence which is available concerning violations of this subchapter or any rule, regulation, or order under this subchapter to the appropriate agency, which may institute the appropriate corrective action or proceedings with or without the reference; or

(B)(i) Summarily order the county or regional industrial development company to cease and desist from the act or practice during the time the Bank Commissioner or the Securities Commissioner may apply to the Pulaski County Circuit Court to enjoin the act or practice and to enforce compliance with this subchapter or any rule, regulation, or order under this subchapter.

(ii) However, the Bank Commissioner or the Securities Commissioner may apply directly to the Pulaski County Circuit Court for injunctive relief without issuing a cease and desist order.

(2) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the county or regional industrial development company or its assets.

(3) The court may not require the Bank Commissioner or the Securities Commissioner to post a bond.

(4) In addition to any other remedy provided in this subchapter or under applicable law, the costs of the Bank Commissioner or the Securities Commissioner incurred in successfully prosecuting violations of this subchapter may be imposed by the court as additional damages payable by the company.

(d) A copy of all reports of the investigation or other proceedings conducted pursuant to this section shall be forwarded to the Director of the Department of Finance and Administration.

History. Acts 1997, No. 904, § 2; 1999, subchapter" in §§ 15-4-1201 — 15-4-1227 No. 37, § 27. may not apply to this section which was

A.C.R.C. Notes. References to "this enacted subsequently.

SUBCHAPTER 13 — ARKANSAS LINKED DEPOSIT PROGRAM ACT

SECTION.

15-4-1301 — 15-4-1312. [Repealed.]

15-4-1301 — 15-4-1312. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1993, No. 318, § 1. The subchapter was derived from the following sources:

15-4-1301. Acts 1991, No. 671, § 1; 1991, No. 682, § 1.

15-4-1302. Acts 1991, No. 671, § 2; 1991, No. 682, § 2.

15-4-1303. Acts 1991, No. 671, § 3; 1991, No. 682, § 3.

15-4-1304. Acts 1991, No. 671, § 12; 1991, No. 682, § 12.

15-4-1305. Acts 1991, No. 671, § 10; 1991, No. 682, § 10.

15-4-1306. Acts 1991, No. 671, § 5; 1991, No. 682, § 3.

15-4-1307. Acts 1991, No. 671, § 4;
1991, No. 682, § 4.
15-4-1308. Acts 1991, No. 671, § 5;
1991, No. 682, § 5.
15-4-1309. Acts 1991, No. 671, § 6;
1991, No. 682, § 6.

15-4-1310. Acts 1991, No. 671, § 8;
1991, No. 682, § 8.
15-4-1311. Acts 1991, No. 671, § 9;
1991, No. 682, § 9.
15-4-1312. Acts 1991, No. 671, § 7;
1991, No. 682, § 7.

SUBCHAPTER 14 — INVENTORS' ASSISTANCE ACT

SECTION.

15-4-1401. Title.
15-4-1402. Definitions.
15-4-1403. Prototype development center
— Objectives of program.
15-4-1404. Authority of board.
15-4-1405. Annual report.

SECTION.

15-4-1406. Fees — Review of proposals.
15-4-1407. Product development — Con-
tracts.
15-4-1408. Inventors' Assistance Pro-
gram Fund.

Effective Dates. Acts 1991, No. 707, § 11: Mar. 22, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that establishment of businesses by inventors results in numerous benefits to the state; that these benefits include industrial diversification, broadening of the economic base, the creation of jobs, and benefits to the residents of the state through new products and processes; that it is estimated that ninety-five percent (95%) of all inventions are never authoritatively considered primarily because inventors are unfamiliar with the business environment or financial structure necessary for implementing their proposals; that this act would provide assistance to inventors and at the same time create benefits to the state and its residents; and that the need for assistance constitutes such an emergency that the immediate passage of this act is necessary in order to provide for assistance to inventors. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1997, No. 324, § 9: Mar. 3, 1997. Emergency clause provided: "It is hereby

found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on State Agencies and Governmental Affairs and in its place established the House Interim Committee and Senate Interim Committee on State Agencies and Governmental Affairs; that various sections of the Arkansas Code refer to the Joint Interim Committee on State Agencies and Governmental Affairs and should be corrected to refer to the House and Senate Interim Committees on State Agencies and Governmental Affairs; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-4-1401. Title.

This subchapter shall be known and may be cited as the "Inventors' Assistance Act".

History. Acts 1991, No. 707, § 1.

15-4-1402. Definitions.

As used in this subchapter:

(1) "Center" means the Center for Prototype Development and Emerging Technologies to be developed and operated by the University of Arkansas at Little Rock;

(2) "Commercial state" means the point at which a product has been developed beyond the theoretical and prototype stage and is capable of being manufactured or practiced commercially;

(3) "Gross sales revenues" means all revenues or anything of value received by any person from the sale of a proprietary product;

(4) "Intellectual property" means patents, copyrights, or trademarks acquired pursuant to federal or state law or applications for patent or for copyright or trademark registration;

(5) "Inventor" means any person who conceives a new concept which may result in a proprietary product;

(6) "Person" means any individual, sole proprietor, partnership, or corporation;

(7) "Product" means any device, technique, process, item of manufacture, composition of matter, or work of authorship;

(8) "Product development plan" means a plan prepared by the center for developing a product to the commercial state;

(9) "Proposal" means a plan provided by the inventor which includes technical and descriptive information on a product;

(10) "Proprietary product" means a product patented, copyrighted, or trademarked pursuant to federal or state law or for which an application for patent or for copyright or trademark registration is pending; and

(11) "Royalties" means all things of value received by an inventor in connection with the licensing of a proprietary product or the assignment, sale, or licensing of intellectual property.

History. Acts 1991, No. 707, § 2.

15-4-1403. Prototype development center — Objectives of program.

(a) The Board of Trustees of the University of Arkansas, in consultation with the Arkansas Inventors Congress, is authorized to establish a Center for Prototype Development and Emerging Technologies at the University of Arkansas at Little Rock to provide assistance to inventors.

(b) The inventors' assistance program shall be designed to:

(1) Attract inventors from throughout this state, the nation, and other countries and encourage them to submit their proposals for review and evaluation;

(2)(A) Provide assistance to inventors whose proposals are accepted after evaluation and review.

(B) Assistance may include limited patent searches, market analysis, product research and development, assistance in obtaining financing, business counseling, and any other assistance not prohibited by the constitution or laws of this state which is necessary to develop the product to the commercial state.

(C) To protect both the state and the inventor, a disclosure document shall be on file with the United States Patent and Trademark Office before the center will review a proposal;

(3) Provide assistance to enable the manufacturing, marketing, and distribution of the product; and

(4) Protect the confidentiality of each inventor's proposals to the extent permitted by law.

History. Acts 1991, No. 707, § 3.

15-4-1404. Authority of board.

(a) The Board of Trustees of the University of Arkansas, on behalf of the Center for Prototype Development and Emerging Technologies, may:

(1) Enter into contracts on a competitive-bid basis or noncompetitive-bid basis, consistent with state laws and regulations, with public and private agencies, institutions, organizations, and individuals for the purpose of providing assistance to and services for inventors as required by this subchapter;

(2) Solicit the support and contribution of public and private agencies, organizations, institutions, and individuals;

(3) Receive and administer funds for the purpose of operating the inventors' assistance program;

(4) Advertise and promote the inventors' assistance program;

(5) Adopt policies and procedures to implement the provisions of this subchapter; and

(6) Acquire security interests in intellectual property to the extent necessary to protect the state's interest in the fees charged pursuant to § 15-4-1406.

(b) The board, on behalf of the center, is authorized to enter into a written contract with each center employee which shall include provisions designed to protect the confidentiality of inventors' proposals and to prohibit the employee from using information gained at the center to compete with or disadvantage any inventor.

History. Acts 1991, No. 707, §§ 4, 5.

15-4-1405. Annual report.

(a) The Center for Prototype Development and Emerging Technologies shall submit an annual report based on the fiscal year on or before December 31 of each year to the Governor and shall mail the report to the Legislative Council to be reviewed by the House Committee on

State Agencies and Governmental Affairs and the Senate Committee on State Agencies and Governmental Affairs.

(b) The report shall include, but not be limited to:

(1) The number of proposals submitted for review and evaluation;

(2) The number of proposals accepted for development and the number rejected;

(3) The number of products patented;

(4) The number of products developed to the commercial state;

(5) The number of jobs created and preserved as a result of the manufacturing, marketing, packaging, warehousing, and distribution of products; and

(6) An estimate of the multiplier effect on the Arkansas economy as a result of jobs so created and preserved.

History. Acts 1991, No. 707, § 7; 1997, No. 324, § 2.

15-4-1406. Fees — Review of proposals.

(a) The Center for Prototype Development and Emerging Technologies shall charge a filing fee of up to five hundred dollars (\$500) for each proposal submitted for review and evaluation, depending upon the cost to research the proposal as determined by the center.

(b) After review and evaluation, proposals shall be accepted or rejected for product development under the inventors' assistance program.

History. Acts 1991, No. 707, § 5.

15-4-1407. Product development — Contracts.

(a)(1) If a proposal is accepted for product development, the Center for Prototype Development and Emerging Technologies shall prepare a product development plan which will include a technical plan for developing the product, time schedule, and estimated cost.

(2) The center will have an established policy for making decisions to develop products utilizing appropriate resources and bringing the products to a commercial state.

(3) The services of the center may include patent searches, applications for patent, copyright registration, market analysis, product research and development, assistance in obtaining financing, including financing from private resources, and business counseling.

(b)(1) If the inventor wants the center to develop the product according to the product development plan but is unable to finance all or part of the development, then the center may develop the product using in part its own or other resources, provided such resources are available.

(2) The inventor shall be liable to pay a fee according to the policy set forth in subdivision (c)(3) of this section.

(3) The inventor may finance the product development plan in full and, in such cases, there will not be any additional fee involved.

(c) Before services to aid in the development of the product shall commence, the Board of Trustees of the University of Arkansas, on behalf of the center, shall enter into a written contract with the inventor which shall include, in addition to any other provisions consistent with this subchapter:

(1) The services which the center will provide to aid in the development of the product;

(2) Any other services which the center will assist the inventor in obtaining and for which the inventor shall be liable pursuant to written consent;

(3)(A) Authorization for the center to receive a fee not to exceed an amount equal to:

(i) Ten percent (10%) of all royalties from the product for a period not to exceed ten (10) years from the first day after royalties are first received by the inventor;

(ii) One percent (1%) of the gross sales revenue for a period not to exceed ten (10) years from the first day after the product reaches the commercial state; and/or

(iii) An equitable percentage of any consideration received from the sale, licensing, or transfer of any interest in intellectual property or proprietary products.

(B) The fees shall be based on a consideration of the following factors:

(i) The inventor's contribution to the financing of the product according to the product development plan;

(ii) The center's contribution to the financing of the product according to the product development plan; and

(iii) The potential for commercial success of the product;

(4)(A) A written agreement from the inventor that all products developed under the program shall be researched, developed, manufactured, and packaged within this state and distributed from this state, to the extent that it is economically feasible.

(B) Provided, wherever the products are manufactured, the fee set forth in subdivision (c)(3) of this section shall accrue to this state pursuant to the provisions of this subchapter;

(5) Provision for acquisition by the center of any security interest in intellectual property as required to protect the state's interest in the fee set forth in subdivision (c)(3) of this section;

(6) Agreement by the inventor that any assignment, sale, or licensing of a product or intellectual property developed under the program shall be subject to the center's security interest and that any contract with a third party for the assignment, sale, or licensing of a product or intellectual property developed under the program shall explicitly condition such assignment, sale, or license on the prior rights of the center; and

(7) Provision for such fiscal reporting by the inventor, the inventor's assignee, or licensee as may be necessary to assure the performance of all provisions of the written contract.

History. Acts 1991, No. 707, § 5.

15-4-1408. Inventors' Assistance Program Fund.

There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Inventors' Assistance Program Fund". This fund shall consist of all moneys received by the Center for Prototype Development and Emerging Technologies for implementation of this subchapter and all fees received pursuant to this subchapter. Moneys received into the fund are authorized to be applied to implement this subchapter. Any amount in the fund not directly needed to implement this subchapter shall go to the general revenue fund of the state.

History. Acts 1991, No. 707, § 6.

SUBCHAPTER 15 — ARKANSAS AVIATION AND AEROSPACE COMMISSION

SECTION.

15-4-1501 — 15-4-1508. [Repealed.]

15-4-1501 — 15-4-1508. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2005, No. 2086, § 34. The subchapter was derived from the following sources:

15-4-1501. Acts 1992 (1st Ex. Sess.), No. 59, § 1; 1992 (1st Ex. Sess.), No. 60, § 1.

15-4-1502. Acts 1992 (1st Ex. Sess.), No. 59, § 1; 1992 (1st Ex. Sess.), No. 60, § 1; 1997, No. 250, § 97; 1997, No. 540, § 82; 2001, No. 1288, § 7.

15-4-1503. Acts 1992 (1st Ex. Sess.), No. 59, § 1; 1992 (1st Ex. Sess.), No. 60, § 1; 1997, No. 540, § 83.

15-4-1504. Acts 1992 (1st Ex. Sess.), No. 59, § 1; 1992 (1st Ex. Sess.), No. 60, § 1.

15-4-1505. Acts 1992 (1st Ex. Sess.), No. 59, § 1; 1992 (1st Ex. Sess.), No. 60, § 1.

15-4-1506. Acts 1992 (1st Ex. Sess.), No. 59, § 1; 1992 (1st Ex. Sess.), No. 60, § 1; 1995, No. 857, § 1; 1995, No. 1250, § 1.

15-4-1507. Acts 1992 (1st Ex. Sess.), No. 59, § 1; 1992 (1st Ex. Sess.), No. 60, § 1; 1995, No. 434, § 1; 1995, No. 857, § 2; 1995, No. 1250, § 2; 1997, No. 540, § 84.

15-4-1508. Acts 1995, No. 1250, § 3.

SUBCHAPTER 16 — ARKANSAS ECONOMIC DEVELOPMENT INCENTIVE ACT OF 1993

SECTION.

15-4-1601. Title.

15-4-1602. Definitions.

15-4-1603. Economic Development Incentive Fund.

15-4-1604. Powers and duties of the Arkansas Economic Development Commission.

SECTION.

15-4-1605. Qualifications.

15-4-1606. Limitations.

15-4-1607. Transfer of funds.

15-4-1608. Verification.

15-4-1609. Effect of participation.

15-4-1610. [Repealed.]

Effective Dates. Acts 1993, Nos. 788 and 851, § 14: Mar. 30, 1993, and Apr. 2, 1993, respectively. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this state and the state as a whole has been unable to compete with other state's incentive programs for economic development; and, that the incentives afforded by this act are critical to the development and expansion of job opportunities in the state. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 590, § 7: Mar. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of this state that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this state and the state as a whole has been unable to compete with other state's incentive programs for the economic development; and, that the incentives afforded by this act are critical to the development and expansion of job opportunities in the state. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health, and safety shall be in full force and effect immediately upon its passage and approval."

Acts 1995, No. 820, § 5: Mar. 28, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that economic underdevelopment has reached intolerable levels in this state and the state as a whole has been unable to compete with other state's incentive programs for economic development; and, that the incentives afforded by this act are critical to the development and expansion of job opportunities in the state. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 807, § 28: Mar. 25, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this State, and that the establishment of tax incentives afforded by this Act are critical to the development and expansion of job opportunities in those areas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 584, § 11: Mar. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that existing Arkansas businesses must remain competitive in today's global economy; that the tax incentive provided by this Act is necessary to provide businesses with the incentive to invest in Arkansas and hire Arkansans; that other states compete with Arkansas for the location or expansion of business activity and this incentive is also necessary to offer the companies a business environment compatible with other states; and that without this incentive companies considering locations or expansions of their businesses may choose to locate in another state, depriving Arkansas of these jobs and the economic benefit that the jobs bring to the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-4-1601. Title.

This subchapter may be referred to and cited as the "Arkansas Economic Development Incentive Act of 1993".

History. Acts 1993, No. 788, § 1; 1993, No. 851, § 1.

15-4-1602. Definitions.

As used in this subchapter:

(1) "Annual payroll" means the wages of the net new full-time permanent employees based on the payroll for the previous twelve (12) months reported to the Department of Workforce Services and is computed by using the total of the net new full-time permanent employees' reported taxable earnings, including overtime pay;

(2) "Commission" means the Arkansas Economic Development Commission;

(3) "Corporate or regional headquarters" means the home or center of operations, including research and development, of a national or multinational corporation;

(4) "Director" means the Director of the Arkansas Economic Development Commission;

(5) "Distribution center" means a facility for the reception, storage, or shipping of:

(A) A business' own products or products which the business wholesales to retail businesses or ships to its own retail outlets;

(B) Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenues are from out-of-state customers; or

(C) Products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;

(6)(A) "Existing employees" means those employees hired by the business prior to the date of the signed financial incentive plan.

(B) Existing employees may be considered "net new full-time permanent employees" only if:

(i) The position or job filled by the existing employee was created in accordance with the signed financial incentive plan; and

(ii) The position vacated by the existing employee was either filled by a subsequent employee or no subsequent employee will be hired because the business no longer conducts the particular business activity requiring such classification;

(7) "Financial incentive plan" means an agreement entered into by a business and the Arkansas Economic Development Commission to provide the business an incentive to locate a new facility or expand an existing facility in Arkansas;

(8) "Fund" means the Economic Development Incentive Fund;

(9)(A) "High unemployment" means an unemployment rate equal to or in excess of one hundred fifty percent (150%) of the state's average unemployment rate for the preceding calendar year as specified by

statewide annual labor force statistics compiled by the Department of Workforce Services when the state's annual average unemployment rate is six percent (6%) or below.

(B) When the state's annual average unemployment rate is above six percent (6%), "high unemployment" means equal to or in excess of three percent (3%) above the state's average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Department of Workforce Services;

(10)(A)(i) "Net new full-time permanent employee" means a position or job which was created pursuant to a signed financial incentive plan and which is filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned.

(ii) The position or job held by such an employee or employees must have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week.

(B) However, in order to qualify for the provisions of this subchapter, a contractual employee must be offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter; and

(11) "Office sector" means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that act as production centers are performed.

History. Acts 1993, No. 788, § 2; 1993, 540, §§ 31, 85; 1997, No. 807, § 11; 1999, No. 851, § 2; 1995, No. 590, § 1; 1997, No. 584, § 1; 2001, No. 1054, §§ 1-3.

15-4-1603. Economic Development Incentive Fund.

There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Economic Development Incentive Fund" of the Arkansas Economic Development Commission. The fund shall consist of revenues designated for this fund by the Revenue Division of the Department of Finance and Administration pursuant to agreements entered into by the Arkansas Economic Development Commission with qualified businesses.

History. Acts 1993, No. 788, § 3; 1993, No. 851, § 3; 1997, No. 540, § 32; 1999, No. 584, § 2.

15-4-1604. Powers and duties of the Arkansas Economic Development Commission.

The Arkansas Economic Development Commission shall administer the provisions of this subchapter and shall have the following powers and duties in addition to those mentioned in this subchapter and in other laws of this state:

(1) To promulgate rules and regulations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to carry out the provisions of this subchapter;

(2)(A) In highly competitive situations, the Director of the Arkansas Economic Development Commission is authorized to negotiate proposals on behalf of the state with prospective businesses which are considering locating a new facility or expanding an existing facility that would employ the requisite number of net new full-time permanent employees provided by § 15-4-1605.

(B) The Arkansas Economic Development Commission is authorized to negotiate with the business a financial incentive plan up to an amount equal to three and nine-tenths percent (3.9%) of the business' annual payroll for the net new full-time permanent employees, and may negotiate with the business a financial incentive plan up to an amount equal to five percent (5%) of the annual payroll for the net new full-time permanent employees if the business locates in an area of high unemployment as defined by § 15-4-1602;

(3) To provide the Department of Finance and Administration with a copy of each formal agreement entered into by the Arkansas Economic Development Commission with each of the qualifying businesses so that the Department of Finance and Administration will know how much money is to be designated for the Economic Development Incentive Fund each quarter; and

(4) To make disbursement from the fund to qualified businesses which have entered into financial incentive plans.

History. Acts 1993, No. 788, § 4; 1993, No. 851, § 4; 1999, No. 584, § 3.

15-4-1605. Qualifications.

To qualify for the benefits of this subchapter, the entity applying must:

(1) Be classified as one (1) or more of the following types of businesses:

(A) Manufacturers classified in Standard Industrial Classification codes 20-39, including semiconductor and microelectronic manufacturers that will employ one hundred (100) or more net new full-time permanent employees;

(B)(i) Computer businesses primarily engaged in providing:

(a) Computer programming services;

(b) Design and development of prepackaged software;

(c) Digital content production and preservation;

(d) Computer processing and data preparation services;

(e) Information retrieval services; and

(f) Computer and data processing consulting and developing.

(ii) All businesses in the group described in subdivision (1)(B)(i) of this section shall:

(a) Employ twenty-five (25) or more net new full-time permanent employees;

(b) Derive at least seventy-five percent (75%) of the business' revenue from out-of-state sales; and

(c) Have no retail sales to the general public;

(C) Businesses primarily engaged in commercial physical and biological research as classified by Standard Industrial Classification code 8731 that will employ fifty (50) or more net new full-time permanent employees;

(D)(i) Businesses primarily engaged in motion picture production that will employ fifty (50) or more net new full-time permanent employees.

(ii) All businesses in this group must derive at least seventy-five percent (75%) of their revenue from out-of-state sales and have no retail sales to the general public;

(E) A distribution center with no retail sales to the general public unless seventy-five percent (75%) of the sales revenues are from out-of-state customers and that will employ one hundred (100) or more net new full-time permanent employees;

(F) An office sector business with no retail sales to the general public and that will employ fifty (50) or more net new full-time permanent employees;

(G) A national, corporate, or regional headquarters with no retail sales to the general public that will employ fifty (50) or more net new full-time permanent employees; and

(H) A coal mining operation that employs twenty-five (25) or more net new full-time permanent employees;

(2) Hire the requisite number of net new full-time permanent employees within twenty-four (24) months following the date the financial incentive plan was entered into with the Arkansas Economic Development Council;

(3) Agree to certify to the Department of Finance and Administration the number of net new full-time permanent employees and the net new full-time permanent employees' payroll once the number of net new full-time permanent employees reaches the requisite number provided in subdivision (1) of this section and recertify the number and payroll of the net new full-time permanent employees annually thereafter during the term of the financial incentive plan so that the Department of Finance and Administration can determine the amount of money to be deposited into the Economic Development Incentive Fund; and

(4) Agree to certify to the Department of Finance and Administration within thirty (30) days after the number of net new full-time permanent employees falls below the required numbers enumerated in subdivision (1) of this section.

History. Acts 1993, No. 788, § 5; 1993, No. 1054, §§ 4-6; 2001 No. 1065, § 3; No. 851, § 5; 1995, No. 590, § 2; 1997, No. 2005, No. 1962, §§ 58, 59.
807, §§ 19, 20; 1999, No. 584, § 4; 2001, **Amendments.** The 2005 amendment

inserted the subdivision designations in (1)(B)(i) and (ii) and made related changes; inserted "programming services" in (1)(B)(i)(a); deleted "businesses engaged in" preceding "Digital" in (1)(B)(i)(c); substituted "consulting and developing" for "consultants and develop-

ers" in (1)(B)(i)(f); substituted "the group described in subdivision (1)(B)(i) of this section shall" for "this group must" in (1)(B)(ii); and substituted "new full-time permanent employees" for "full-time permanent positions" in (1)(H).

15-4-1606. Limitations.

The following limitations shall apply to all financial incentive plans negotiated by the Arkansas Economic Development Commission:

(1)(A) The term of a financial incentive plan shall not exceed one hundred twenty-six (126) months.

(B)(i) For defense industry projects, as defined in § 26-52-702, the one hundred and twenty-six (126) months shall be calculated forward from the date certification of the mandatory number of employees is granted by the Department of Finance and Administration.

(ii) For all other financial incentive plans, the one hundred twenty-six (126) months shall be calculated forward from the date of the financial incentive plan entered into by the business and the Arkansas Economic Development Commission;

(2) The business shall not be entitled to the benefits of a financial incentive plan entered into with the Arkansas Economic Development Commission until twelve (12) months after it has hired the requisite number of net new full-time permanent employees and has certified that fact to the Department of Finance and Administration as required by this subchapter;

(3)(A) If the number of net new full-time permanent employees drops below the requisite number provided in § 15-4-1605, all benefits under the financial incentive plan entered into with the Arkansas Economic Development Commission shall be terminated unless the Director of the Arkansas Economic Development Commission and the Chief Fiscal Officer of the State approve a written request filed by the business explaining why the number of net new full-time permanent employees fell below the requisite number. The Director of the Arkansas Economic Development Commission and the Chief Fiscal Officer of the State may grant the business up to twenty-four (24) months to bring the number of net new full-time permanent employees back up to the requisite number and may approve the continuation of benefits during that period.

(B)(i) In the event that the requisite number of net new full-time permanent employees cannot be employed within the twenty-four-month period, the business can file a written application with the Arkansas Economic Development Commission explaining why additional time is necessary. The business can be afforded up to twenty-four (24) more months to hire the requisite number of employees if the Director of the Arkansas Economic Development Commission and the Chief Fiscal Officer of the State agree.

(ii) In the event that a business fails to notify the Department of Finance and Administration that the number of net new full-time permanent employees has fallen below the required number to continue to receive benefits under a financial incentive plan, that business will be liable for the repayment of all benefits which were paid to the business after it no longer qualified for the benefits. Interest shall also be due at the rate of ten percent (10%) per annum; (4)(A) The financial benefits received by a business shall be used in accordance with the financial incentive plan entered into with the Arkansas Economic Development Commission.

(B)(i) Financial incentive plans shall designate how the funds are to be used by the business.

(ii) A financial incentive plan may designate funds for employee training, infrastructure, or other purposes agreed to by the business and the Director of the Arkansas Economic Development Commission; and

(5) Recipients of benefits under this subchapter are precluded from receiving benefits under § 2-8-101 et seq. [repealed] and the Arkansas Economic Development Act of 1995, § 15-4-1901 et seq.

History. Acts 1993, No. 788, § 6; 1993, 807, § 22; 1999, No. 584, § 5; 2001, No. 851, § 6; 1995, No. 820, § 1; 1997, No. 737, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Tax Law, 24 U. Ark. Little Rock L. Legislation, 2001 Arkansas General As- Rev. 613.

15-4-1607. Transfer of funds.

After the Department of Finance and Administration has received the certification of the number of employees and their payroll from a business that has entered into a financial incentive plan with the Arkansas Economic Development Commission, the Department of Finance and Administration shall transfer the appropriate amount of money designated by the financial incentive plan out of general revenues into a special account designated as special revenue for the Economic Development Incentive Fund.

History. Acts 1993, No. 788, § 7; 1993, No. 851, § 7.

15-4-1608. Verification.

(a) The Department of Finance and Administration shall have the authority to obtain whatever information necessary from participating businesses and from the Department of Workforce Services to verify that businesses which have entered into financial incentive plans with the Arkansas Economic Development Commission are complying with the terms of the financial incentive plans and reporting accurate

information concerning the number of employees and their payrolls to the Department of Finance and Administration.

(b) The Department of Finance and Administration may promulgate rules and regulations necessary for the proper administration of the provisions of this subchapter.

History. Acts 1993, No. 788, § 8; 1993, No. 851, § 8; 1995, No. 590, § 3.

15-4-1609. Effect of participation.

Receiving benefits pursuant to this subchapter will preclude a business from participating in the incentive program of the Arkansas Economic Development Act of 1995, § 15-4-1901 et seq.

History. Acts 1993, No. 788, § 9; 1993, No. 851, § 9; 1999, No. 584, § 6.

15-4-1610. [Repealed.]

Publisher's Notes. This section, concerning the effective date of this subchapter, was repealed by Acts 1999, No. 584,

§ 7. The section was derived from Acts 1993, No. 788, § 10; 1993, No. 851, § 10.

SUBCHAPTER 17 — ARKANSAS ENTERPRISE ZONE ACT OF 1993

SECTION.

- 15-4-1701. Title.
- 15-4-1702. Definitions.
- 15-4-1703. Powers and duties of the Arkansas Economic Development Commission.
- 15-4-1704. Refund of sales and use tax — Tax credit.

SECTION.

- 15-4-1705. Projects under Manufacturer's Investment Sales and Use Tax Credit Act of 1985.
- 15-4-1706 — 15-4-1708. [Repealed.]
- 15-4-1709. Exceptions.

A.C.R.C. Notes. Acts 1999, No. 1130, § 7 provides: "The additional benefits provided by this act shall only apply to those financial incentive plans signed after July 30, 1999."

References to "this subchapter" in §§ 15-4-1701 — 15-4-1705 may not apply to § 15-4-1709 which was enacted subsequently.

Effective Dates. Acts 1993, No. 947, § 14: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this state, and that the establishment of tax incentives afforded by this Act are critical to the development

and expansion of job opportunities in those areas. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect on July 1, 1993."

Acts 1995, No. 394, § 9: Feb. 20, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that unemployment and economic underdevelopment have reached intolerable levels in certain portions of this state, and that the establishment of tax incentives afforded by this act are crucial to the development and expansion of job opportunities in those areas. Therefore an emergency is hereby declared to exist and this act being necessary for the preserva-

tion of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 807, § 28: Mar. 25, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this State, and that the establishment of tax incentives afforded by this Act are critical to the development and expansion of job opportunities in those areas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1130, § 11: Apr. 6, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that existing Arkansas businesses must remain competitive in today's global economy; that the tax incentive provided by this Act is necessary to provide businesses with the incentive to invest in Arkansas and hire Arkansans; that other states compete with Arkansas for the location or expansion of business activity and this incentive is also necessary to offer the companies a business environment compatible with other states; and that without this incentive companies considering locations or expansions of their businesses may choose to locate in another state, depriving Arkansans of these jobs and the economic benefit that the jobs bring to the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become ef-

fective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 807, § 6: Mar. 19, 2001. Emergency clause provided: "It is found and determined by the General Assembly that this act is designed to bring new jobs to this state; that current financial conditions dictate that unless industries can take advantage of the provisions of this act immediately they may be forced to locate in another state; that unless this bill takes effect immediately significant numbers of jobs will be lost to this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also [become] effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

CASE NOTES

Refund Request.

A 1995 request for refund pursuant to the 1989 version of this act was held to be timely; the limitations provision of § 26-

18-306(i) does not apply to the EZP refund claim procedure, so under the law as it now exists, an EZP 1000 refund claim form may be filed at any time. *Acxiom*

Corp. v. Leathers, 331 Ark. 205, 961 S.W.2d 735 (1998).

15-4-1701. Title.

This subchapter may be referred to and cited as the "Arkansas Enterprise Zone Act of 1993".

History. Acts 1993, No. 947, § 1; 1999, No. 1130, § 1.

CASE NOTES

Cited: Ark. Dep't of Econ. Dev. v. William J. Clinton Presidential Found., 364 Ark. 40, 216 S.W.3d 119 (2005).

15-4-1702. Definitions.

As used in this subchapter:

(1)(A) "Average hourly wage" means the average wage of the net new full-time permanent employees based on payroll for the most recent quarter reported to the Department of Workforce Services.

(B) "Average hourly wage" is computed by using the total of the net new full-time permanent employee's reported taxable earnings, including overtime pay and one quarter ($\frac{1}{4}$) of the employee's annual bonus amount, divided by the number of weeks worked during the most recent quarter, divided by the average hours worked per week per net new full-time permanent employee;

(2) "Commission" means the Arkansas Economic Development Commission;

(3) "Corporate headquarters" means the home or center of operations, including research and development, of a national or multinational corporation;

(4) "Director" means the Director of the Arkansas Economic Development Commission;

(5) "Distribution center" means a facility for the reception, storage, or shipping of:

(A) A business's own products or products that the business wholesales to retail businesses or ships to its own retail outlets;

(B) Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenues are from out-of-state customers; or

(C) Products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;

(6)(A) "Existing employees" means those employees hired by the business prior to the date of the financial incentive plan.

(B) Existing employees may be considered net new full-time permanent employees only if:

(i) The position or job filled by the existing employee was created as a result of the project; and

(ii) The position vacated by the existing employee was either filled by a subsequent employee or no subsequent employee would be hired because the business no longer conducts the particular business activity requiring such a classification;

(7) "Financial incentive plan" means an agreement entered into by a business and the Arkansas Economic Development Commission to provide the business an incentive to locate a new facility or expand an existing facility in Arkansas;

(8) "Governing authority" means the quorum court of a county or the governing body of a municipality;

(9)(A) "High unemployment" means an unemployment rate equal to or in excess of one hundred fifty percent (150%) of the state's average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Department of Workforce Services when the state's annual average unemployment rate is six percent (6%) or below.

(B) When the state's annual average unemployment rate is above six percent (6%), "high unemployment" means an unemployment rate equal to or in excess of three percent (3%) above the state's average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Department of Workforce Services;

(10) "Modernization" means to increase efficiency or to increase productivity of the business through investment in machinery or equipment, or both, and shall not include costs for routine maintenance;

(11)(A)(i) "Net new full-time permanent employee" means a position or job that was created pursuant to a signed financial incentive plan and that is filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned.

(ii) The position or job held by the employee or employees must have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week.

(B) However, in order to qualify for the provisions of this subchapter, a contractual employee must be offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter.

(C) Employees could not have been claimed for tax credits or incentives under this subchapter during the preceding taxable year.

(D) The number of net new full-time permanent employees shall be equal to the total number of new full-time permanent employees for the current year minus the total number of new full-time permanent employees for the previous tax year;

(12) "Office sector business" means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that act as production centers are performed;

(13) "Program" means the Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq.;

(14)(A) "Project" means:

(i) All activities and costs associated with the construction of a new plant or facility;

(ii) The expansion of an established plant or facility by adding to the building or production equipment or support infrastructure, or both; or

(iii) Modernization through the replacement of production or processing equipment or support infrastructure, or both.

(B) Expenditures for routine repair and maintenance that do not result in new construction or expansion are ineligible for benefits under this subchapter.

(C) In order to receive credit for project costs, the costs must be incurred within four (4) years from the date the project plan was approved by the Arkansas Economic Development Commission.

(D) Routine operating expenditures are ineligible for benefits under this subchapter;

(15) "Project plan" means the plan submitted to the Arkansas Economic Development Commission containing such information as may be required by the director to determine eligibility for benefits;

(16) "Regional headquarters" means the center of operations for a specific geographical area;

(17) "Routine maintenance" means the replacement of existing machinery parts with like parts; and

(18) "Trucking sector business" means a business that is classified within the Standard Industrial Classification code number 4231.

History. Acts 1993, No. 947, § 2; 1995, No. 394, §§ 1-3; 1997, No. 540, §§ 33, 86; 1997, No. 807, §§ 1, 12; 1999, No. 1130, § 2; 2001, No. 807, § 1; 2001, No. 1401, § 4; 2003, No. 1473, § 31.

A.C.R.C. Notes. Acts 2001, No. 1401, § 1, provided: "LEGISLATIVE INTENT. It is the intent of the General Assembly that expenditures for replacements of items previously purchased as part of a project and routine operating expenditures would not be eligible for benefits

under the Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq., or the Arkansas Economic Development Act of 1995, § 15-4-1901 et seq. These incentive program provisions are in need of clarification, and the purpose of the amendments in this act is to ensure that the original legislative intent is fulfilled."

U.S. Code. The Standard Industrial Classification code, referred to in this section, was defined at 15 U.S.C. § 644(e), which was repealed in 1994.

15-4-1703. Powers and duties of the Arkansas Economic Development Commission.

The Arkansas Economic Development Commission shall administer the provisions of this subchapter and shall have the following powers and duties, in addition to those mentioned in this subchapter and in other laws of this state:

(1) To monitor the implementation and operation of this subchapter and to conduct a continuing evaluation of the progress made;

(2) To assist the governing authority in obtaining assistance from any other department of state government, including assistance in providing training and technical assistance to new businesses and industries;

(3) To assist any employer or prospective employer with a qualifying project in obtaining the benefits of any incentive or inducement program authorized by state law;

(4) To act as a liaison between other state agencies and businesses and industries to assure that both the spirit and the intent of this subchapter are met;

(5) To submit an annual written report evaluating the effectiveness of the program and presenting any suggestions for improving the program, to be submitted to the Governor no later than March 1 of each year; and

(6) To promulgate rules and regulations, in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to carry out the provisions of this subchapter.

History. Acts 1993, No. 947, § 3; 1999, No. 1130, § 3.

CASE NOTES

Cited: Ark. Dep't of Econ. Dev. v. William J. Clinton Presidential Found., 364 Ark. 40, 216 S.W.3d 119 (2005).

15-4-1704. Refund of sales and use tax — Tax credit.

(a)(1) The Revenue Division of the Department of Finance and Administration shall authorize a refund of sales and use taxes imposed by the state and a municipality or county if the municipality or county authorized the refund of its local tax on the purchases of the material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any legitimate business enterprise and machinery and equipment to be located in or in connection with such a building.

(2) A refund shall not be authorized for routine operating expenditures.

(3)(A)(i) A refund shall not be authorized for the purchase of replacements of items previously purchased as part of a project under this subchapter unless the items previously purchased will not enable the project to function as originally intended.

(ii) In order to qualify for a refund under this subchapter, the replacement of an item previously purchased must be necessary for the implementation or completion of the project.

(B) However, a program participant may make changes in a project by amendment to the project plan filed with the Arkansas Economic Development Council.

(4)(A) All claims for sales and use tax refunds under this subchapter shall be filed with the Revenue Division within three (3) years from the date of the qualified purchase or purchases.

(B) Claims filed after three (3) years from the date of the qualified purchase or purchases shall be disallowed.

(5)(A) The time limitation in this section for filing claims shall be tolled if:

(i) A program participant fails to pay sales or use tax on an item that was taxable; and

(ii) The applicable tax is subsequently assessed as a result of an audit by the Revenue Division.

(B) All claims for sales and use tax refunds relating to an audited purchase shall be filed with the Revenue Division within one (1) year after payment of the assessed tax or the date of a final administrative or judicial order, whichever is later.

(6) A program participant that files a claim for a sales or use tax refund relating to an audited purchase shall be entitled to a refund of interest paid on the amount of tax assessed on the audited purchase if a refund is approved for the purchase.

(b) A sales and use tax refund as provided for in subsection (a) of this section shall be authorized, provided that the business is classified as one (1) of the following types of businesses:

(1) Manufacturers classified in Standard Industrial Classification codes 20-39, including semiconductor and microelectronic manufacturers, that create one (1) or more net new full-time permanent jobs;

(2)(A) Computer businesses primarily engaged in:

(i) Providing computer programming services;

(ii) The design and development of prepackaged software;

(iii) Businesses engaged in digital content production and digital preservation;

(iv) Computer processing and data preparation services;

(v) Information retrieval services; and

(vi) Computer and data processing consultants and developers.

(B) All businesses in this group must:

(i) Create five (5) or more net new full-time permanent jobs after July 1, 2001;

(ii) Derive at least seventy-five percent (75%) of their revenue from out-of-state sales; and

(iii) Have no retail sales to the general public;

(3) Businesses primarily engaged in commercial physical and biological research as classified by Standard Industrial Classification code 8731 that create one (1) or more net new full-time permanent jobs;

(4)(A) Businesses primarily engaged in motion picture production that will create twenty-five (25) or more net new full-time permanent jobs.

(B) All businesses in this group must derive at least sixty percent (60%) of their revenue from out-of-state sales and have no retail sales to the general public;

(5) A distribution center with no retail sales to the general public, unless seventy-five percent (75%) of the sales revenues are from out-of-state customers, that creates twenty-five (25) or more net new full-time permanent jobs;

(6) An office sector business with no retail sales to the general public that creates twenty-five (25) or more net new full-time permanent jobs;

(7) A corporate or regional headquarters with no retail sales to the general public that creates twenty-five (25) or more net new full-time permanent jobs;

(8) A trucking/distribution terminal as classified by Standard Industrial Classification code 4231 with no retail sales to the general public that creates twenty-five (25) or more net new full-time permanent jobs; and

(9) A coal mining operation that employs twenty-five (25) or more net full-time permanent persons.

(c) The business shall file an endorsement resolution with the Arkansas Economic Development Council and the Department of Finance and Administration. The endorsement resolution must be approved by the governing body of a municipality or county in whose jurisdiction the facility is located and must:

(1) Approve the specific entity's participation in the program; and

(2) Specifically state whether the municipality or county authorizes the Department of Finance and Administration to refund local sales and use taxes to the entity under the program. A municipality or county can authorize the refund of all or part of a tax levied by it but cannot authorize the refund of any tax not levied by it.

(d) In the event it is found that any business receiving the benefits contained in subsection (a) of this section has failed to comply with the conditions contained in subsections (b) and (c) of this section, that business will be liable for the payment of all sales and use taxes which were refunded under subsection (a) of this section.

(e) If the business does not continuously and throughout the project term meet the requirements of subdivisions (b)(1)-(8) of this section, then that business will automatically be disqualified from receiving any benefits under this section and will be required to repay any tax benefits already received under this subchapter, plus penalty and interest, as allowed by law.

(f)(1) In the event that a business fails to notify the Department of Finance and Administration that the number of employees has fallen below the required number to continue to receive benefits under this subchapter, that business will be liable for the repayment of all benefits which were paid to the business after it no longer qualified for the benefits.

(2) Interest shall also be due at the rate of ten percent (10%) per annum.

(g)(1) The requisite number of net new full-time permanent employees must be employed by the business within twenty-four (24) months following the date the financial incentive plan was signed.

(2) In the event that the requisite number of net new full-time permanent employees cannot be employed within the twenty-four-month period, the business can file a written application with the commission explaining why additional time is necessary. The business can be afforded up to twenty-four (24) more months to hire the requisite number of employees if the Director of the Arkansas Economic Development Council and the Chief Fiscal Officer of the State determine that the need for additional time is due to:

(A) Unanticipated and unavoidable delay in the construction of a facility that must be completed before the employees can be hired;

(B) The project as originally planned will require more than twenty-four (24) months to complete; or

(C) A change in the business ownership or business structure due to a merger or acquisition.

(h)(1) The Revenue Division of the Department of Finance and Administration shall authorize an income tax credit equal to one hundred (100) times the average hourly wage paid, with a maximum of three thousand dollars (\$3,000) per net new full-time permanent employee hired within sixty (60) months following the date of the approved financial incentive plan of a business qualifying under subsection (b) of this section.

(2)(A) This tax credit may be used for the taxable year in which the net new full-time permanent employee was hired.

(B) However, with respect to projects approved prior to March 25, 1997, if the entire credit cannot be used in the year earned, the remainder may be applied against the income tax for the succeeding four (4) years or until the credit is entirely used, whichever occurs first. For projects approved on or after March 25, 1997, the credit may be applied against income tax for the succeeding nine (9) years or until the credit is entirely used, whichever occurs first.

(3) The multiplier allowed under this section shall be four hundred (400) multiplied by the average hourly wage paid with a maximum credit of six thousand dollars (\$6,000) if the business is located in a high-unemployment county.

(i)(1) An income tax credit as provided for in subsection (c) of this section shall be authorized, provided that:

(A) The request for such a credit is accompanied by an endorsement resolution approved by the governing body of the appropriate municipality or county in whose jurisdiction the establishment is to be located; and

(B) All of the net new full-time permanent employees are employed at the facility.

(2)(A) In the event it is found that any business receiving the benefits contained in subsection (h) of this section has failed to comply with the conditions contained in this section, that business shall be disqualified from receiving any further benefits under the program and shall be liable for the payment of such additional income taxes as may be due after the income tax credits provided for in subsection (h) of this section are disallowed.

(B) Interest shall also be due at the rate of ten percent (10%) per annum.

(j) To be counted as a net new full-time permanent employee for the purpose of qualifying for the tax credits and incentives provided in this section, the employee in the position or job must have been an Arkansas taxpayer during the year in which the tax credits or incentives were earned.

History. Acts 1993, No. 947, § 4; 1995, No. 394, §§ 4, 5; 1997, No. 807, §§ 2-9, 13; 1999, No. 1130, § 4; 2001, No. 807, §§ 2-4; 2001, No. 1065, § 1; 2001 No. 1401, § 2; 2005, No. 443, § 1.

A.C.R.C. Notes. Acts 2001, No. 1401, § 1, provided: "LEGISLATIVE INTENT. It is the intent of the General Assembly that expenditures for replacements of items previously purchased as part of a project and routine operating expenditures would not be eligible for benefits under the Arkansas Enterprise Zone Act

of 1993, § 15-4-1701 et seq., or the Arkansas Economic Development Act of 1995, § 15-4-1901 et seq. These incentive program provisions are in need of clarification, and the purpose of the amendments in this act is to ensure that the original legislative intent is fulfilled."

Amendments. The 2005 amendment inserted "hired within sixty (60) months following the date of the approved financial incentive plan" in (h)(1); and substituted "may be used" for "shall be used" in (h)(2)(A).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Natural Resources, 24 U. Ark. Little Rock L. Rev. 513.

CASE NOTES

ANALYSIS

Nonprofit Entity.
Statute of Limitations.

Nonprofit Entity.

Trial court properly ruled that foundation qualified as a nonprofit entity; the foundation did not bar nonprofit entities from economic development incentives outlined in the program and the foundation met the three elements required by subdivision (b)(7) of this section. Ark. Dep't of Econ. Dev. v. William J. Clinton

Presidential Found., 364 Ark. 40, 216 S.W.3d 119 (2005).

Statute of Limitations.

A 1995 request for refund pursuant to the 1989 version of this act was held to be timely; the limitations provision of § 26-18-306(i) does not apply to the EZP refund claim procedure, so under the law as it now exists, an EZP 1000 refund claim form may be filed at any time. Acxiom Corp. v. Leathers, 331 Ark. 205, 961 S.W.2d 735 (1998).

15-4-1705. Projects under Manufacturer's Investment Sales and Use Tax Credit Act of 1985.

(a)(1) No person or entity may file for benefits under this subchapter if an application for benefits has been filed and approved under the Economic Investment Tax Credit Act, § 26-52-701 et seq., for the same project.

(2) However, an application for benefits under the Economic Investment Tax Credit Act, § 26-52-701 et seq., may be withdrawn if no tax credits have been taken under that subchapter.

(b)(1) When a project has been approved under the Economic Investment Tax Credit Act, § 26-52-701 et seq., no application for a project under this subchapter will be accepted until the expiration of one (1) year after the date of the approval of the application under the Economic Investment Tax Credit Act, § 26-52-701 et seq.

(2) When a project has been approved under this subchapter, no application for projects under the Economic Investment Tax Credit Act, § 26-52-701 et seq., shall be accepted until the expiration of one (1) year after the date of approval of the application under this subchapter.

History. Acts 1993, No. 947, § 5; 1999, No. 1130, § 5.

15-4-1706 — 15-4-1708. [Repealed.]

Publisher's Notes. Former §§ 15-4-1706 — 15-4-1708, concerning a transition period, the effective date, and the expiration date of this subchapter, were repealed by Acts 1999, No. 1130, § 6. The sections were derived from the following sources:

15-4-1706. Acts 1993, No. 947, §§ 6, 7.
15-4-1707. Acts 1993, No. 947, §§ 8, 9.
15-4-1708. Acts 1993, No. 947, § 10; 1997, No. 807, § 10.

15-4-1709. Exceptions.

(a) A county that does not qualify as a high-unemployment county, as defined in § 15-4-1702, but has experienced a sudden and severe period of economic distress caused by the closing of a business entity that results in the loss of a minimum of five hundred (500) full-time permanent jobs or a minimum of five percent (5%) of the employed labor force, as determined by the most recent "Labor Market Information" publication published by the Department of Workforce Services, may be designated as a high-unemployment county by the Arkansas Economic Development Council.

(b) The designation as a high-unemployment county shall be in effect for one (1) year after the closing of the business.

History. Acts 2001, No. 807, § 5.

A.C.R.C. Notes. References to "this subchapter" in §§ 15-4-1701 — 15-4-1708

may not apply to this section which was enacted subsequently.

SUBCHAPTER 18 — MAJOR INDUSTRY FACILITIES INCENTIVE ACT

SECTION.

- 15-4-1801. Title.
- 15-4-1802. Definitions.
- 15-4-1803. Application for assistance generally.
- 15-4-1804. Application — Contents.
- 15-4-1805. Application — Hearings.
- 15-4-1806. Application — Determination of eligibility.

SECTION.

- 15-4-1807. State assistance.
- 15-4-1808. Major Industry Facilities Incentive Fund — Creation.
- 15-4-1809. Payments.
- 15-4-1810. Suspension of local tax.
- 15-4-1811. Pledge of state revenues prohibited.

15-4-1801. Title.

This subchapter shall be known as the “Major Industry Facilities Incentive Act”.

History. Acts 1993, No. 1165, § 1.

15-4-1802. Definitions.

As used in this subchapter:

- (1) “Bonds” means revenue bonds or general obligation bonds;
- (2) “Eligible facility” means any facility owned by any state agency or political subdivision and any facility financed through the issuance of bonds by any state agency or political subdivision at which at least one hundred (100) people are employed and which is acquired or completed or substantially reconstructed or expanded after December 31, 1992;
- (3) “Political subdivision” means cities of the first class or cities of the second class and counties and any governmental entity created by them; and
- (4) “State income tax” means the Arkansas state income tax.

History. Acts 1993, No. 1165, § 2.

15-4-1803. Application for assistance generally.

Any state agency or political subdivision that has acquired or constructed or which desires to acquire or construct or which has financed or which desires to finance through the issuance of its bonds an eligible facility may apply to the State Board of Finance for state assistance in paying the debt service requirements, including principal, interest, and trustee’s and paying agent’s fees and charges, on bonds issued or to be issued by the state agency or political subdivision to finance all or a portion of the eligible facilities and capital improvements related thereto and any amounts theretofore expended by the state agency or political subdivision from its revenues to acquire or construct the eligible facility and capital improvements related thereto, increased by an annual rate of interest equal to the average rate of interest to be paid on the bonds issued to finance the facility.

History. Acts 1993, No. 1165, § 3.

15-4-1804. Application — Contents.

(a) All applications for state assistance under this subchapter shall be in writing and shall describe:

- (1) The eligible facilities;
- (2) The financing thereof;
- (3) The estimated number of people to be employed at the facility;
- (4) The estimated additional state income tax revenues to be derived as a result of the expenditures;
- (5) The expected expense, if any, to the state; and

(6) Any other matters prescribed by the State Board of Finance.

(b) Upon receipt of an application for state assistance, the board shall proceed promptly to review it and shall notify the applicant of any additional information needed for a proper evaluation of the application.

History. Acts 1993, No. 1165, §§ 4, 5.

15-4-1805. Application — Hearings.

(a) After reviewing the application and upon reasonable notice to the applicant, the State Board of Finance shall hold a public hearing on the application.

(b)(1) The board shall give notice of the time, place, and purpose of the public hearing by publication one (1) time in a newspaper of general circulation within the boundaries of the applicant, the publication to be not less than ten (10) calendar days prior to the hearing.

(2) The notice shall describe generally the facilities for which state assistance has been requested and shall contain a brief description of the procedural steps to be taken in connection with the application and the financing of the facilities.

(c) At the public hearing, representatives of the applicant and any other interested persons may appear and present evidence and argument in support of or in opposition to the application, and the board may present additional evidence.

History. Acts 1993, No. 1165, § 6.

15-4-1806. Application — Determination of eligibility.

(a) After consideration of the application and conclusion of the hearing, the State Board of Finance shall determine whether the facilities described in the application are eligible facilities.

(b) If the board determines that the facilities described in the application are eligible facilities and that the financing of or repayment for such eligible facilities through a combination of bonds of the applicant and state assistance under this subchapter is in the best interest of the applicant and the state, the application shall be approved.

(c) In determining whether state assistance is in the best interest of the applicant and the state, the board shall consider:

(1) The capacity of the applicant to issue bonds to finance the eligible facilities;

(2) The amount of additional state income tax revenues estimated to be derived from the eligible facilities; and

(3) The estimated principal and interest requirements for the bonds issued in connection with the eligible facilities or amounts necessary to repay the investment by a state agency or political subdivision in eligible facilities.

History. Acts 1993, No. 1165, § 7.

15-4-1807. State assistance.

(a) If the application is approved, the State Board of Finance shall fix the amount of state assistance to the state agency or political subdivision to repay its investment or for paying debt service on the bonds issued to finance, in whole or in part, the eligible facilities, if requested by the state agency or political subdivision and, on behalf of the state, shall enter into an agreement providing for the payment of the amount so fixed in quarterly payments and shall certify the amount to the Treasurer of State.

(b) If the state agency or political subdivision issues two (2) or more issues of bonds to finance eligible facilities, the amount of state assistance shall be fixed separately for each issue.

(c) The total amount of state assistance shall be fixed at no more than the additional state income tax revenues directly generated by the eligible facilities.

(d) It shall be a condition to any payments under this subchapter that the state agency or political subdivision has issued and has outstanding its bonds for the purpose of financing, in whole or in part, the eligible facilities, but this shall not limit the provisions in this subchapter for repayment of a state agency's or political subdivision's investment heretofore made in eligible facilities.

(e) The payments provided for in this subchapter shall be subject to the specific appropriation by the General Assembly and shall be for a term of not longer than two (2) years, but, subject to the appropriation by the General Assembly, shall be extended from time to time for additional terms of not to exceed two (2) years each.

History. Acts 1993, No. 1165, § 8.

15-4-1808. Major Industry Facilities Incentive Fund — Creation.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Major Industry Facilities Incentive Fund".

(b) The Treasurer of State shall monthly, before making the percentage distributions of general revenues as provided by law, deduct from the General Revenue Fund Account of the State Apportionment Fund an amount of money necessary to meet the quarterly payments to state agencies and political subdivisions provided for in this subchapter and shall credit them to the Major Industry Facilities Incentive Fund, and shall quarterly pay over the amounts to each state agency or political subdivision, provided that the General Assembly shall have appropriated funds for them.

(c)(1) The State Board of Finance shall certify to the Treasurer of State the amount of assistance to each state agency or political

subdivision for paying debt service on the bonds issued to finance the eligible facilities.

(2) If it should be determined that overpayments were made to the entity, then the overpayments shall be recovered by reducing the succeeding fiscal year's entitlement by the overpayment.

History. Acts 1993, No. 1165, §§ 9-11.

15-4-1809. Payments.

(a) Payments of state assistance to state agencies and political subdivisions under this subchapter shall be made by remitting them directly to the trustee for the holders of the bonds issued to finance the eligible facilities.

(b) The trustee shall apply the state assistance money to the payment or redemption of the bonds and to the payment of interest thereon.

(c) When the bonds issued to finance the eligible facilities are fully retired or the investment of the state agency or political subdivision of its revenues in the eligible facilities has been repaid with accrued and accruing interest, any money then held by the trustee derived from the state assistance shall be returned to the Treasurer of State and deposited in the State Treasury as general revenues to the credit of the General Revenue Fund Account of the State Apportionment Fund, and future eligibility for that project shall be terminated.

History. Acts 1993, No. 1165, § 12.

15-4-1810. Suspension of local tax.

Any state agency or political subdivision entering into an agreement pursuant to this subchapter may provide for suspension, in whole or in part, of the collection of any tax voted for payment of its general obligation bonds issued in accordance with an agreement under this subchapter in any year when money derived from state assistance under this subchapter or from other sources is available for payment of all or a portion of the debt service on the bonds.

History. Acts 1993, No. 1165, § 13.

15-4-1811. Pledge of state revenues prohibited.

(a) Nothing in this subchapter shall be construed as authorizing the pledging of the faith and credit of the state or any of its revenues, either for the performance of the obligations of the state under the agreements authorized by this subchapter or for the payment of bonds issued pursuant to such agreements.

(b) All payments to state agencies and political subdivisions under this subchapter are made subject to specific appropriations for such purpose and nothing in this subchapter or in any agreement entered into pursuant to this subchapter shall be construed to require the

General Assembly to make any appropriation pursuant to this subchapter or such agreement or to prohibit the General Assembly from amending or repealing this subchapter at any time.

History. Acts 1993, No. 1165, § 14.

SUBCHAPTER 19 — ARKANSAS ECONOMIC DEVELOPMENT ACT OF 1995

SECTION.

- 15-4-1901. Title.
- 15-4-1902. Definitions.
- 15-4-1903. Powers and duties of the Arkansas Economic Development Commission.
- 15-4-1904. Qualifications.

SECTION.

- 15-4-1905. Financial incentive plan.
- 15-4-1906. Refund of sales and use tax — Income tax credit.
- 15-4-1907. Verification.
- 15-4-1908. Effect of participation.

Effective Dates. Acts 1995, No. 831, § 9: in full force and effect for all tax years beginning on and after January 1, 1995.

Acts 1995, No. 831, § 13: Mar. 29, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that economic underdevelopment has reached intolerable level in this state and the state as a whole has been unable to compete with other state's incentive programs for economic development; and, that the incentives afforded by this act are critical to the development and expansion of job opportunities in the state. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 807, § 28: Mar. 25, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this State, and that the establishment of tax incentives afforded by this Act are critical to the development and expansion of job opportunities in those areas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the

period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 575, § 8: Mar. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that existing Arkansas businesses must remain competitive in today's global economy; that the tax incentive provided by this act is necessary to provide businesses with the incentive to invest in Arkansas and hire Arkansans; that other states compete with Arkansas for the location or expansion of business activity and this incentive is also necessary to offer the companies a business environment compatible with other states; and that without this incentive companies considering locations or expansions of their businesses may choose to locate in another state, depriving Arkansans of these jobs and the economic benefit that the jobs bring to the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-4-1901. Title.

This subchapter may be referred to and cited as the “Arkansas Economic Development Act of 1995”.

History. Acts 1995, No. 831, § 1.

15-4-1902. Definitions.

As used in this subchapter:

(1)(A) “Average hourly wage” means the average wage of the net new full-time permanent employees based on payroll for the most recent quarter reported to the Department of Workforce Services.

(B) “Average hourly wage” is computed by using the total of the net new full-time permanent employees’ reported taxable earnings, including overtime pay and one quarter ($\frac{1}{4}$) of the employee’s annual bonus amount, divided by the number of weeks worked during the most recent quarter, divided by the average hours worked per week per net new full-time permanent employee.

(2) “Commission” means the Arkansas Economic Development Commission;

(3) “Corporate headquarters” means the home or center of operations, including research and development, of a national or multinational corporation;

(4) “Director” means the Director of the Arkansas Economic Development Commission;

(5) “Distribution center” means a facility for the reception, storage, or shipping of:

(A) A business’ own products or products that the business wholesales to retail businesses or ships to its own retail outlets;

(B) Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenues are from out-of-state customers; or

(C) Products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;

(6) “Eligible business” is defined as one (1) or more of the following:

(A) Manufacturers classified in Standard Industrial Classification codes 20-39, including semiconductor and microelectronic manufacturers;

(B)(i) Computer businesses primarily engaged in providing computer programming services; the design and development of prepackaged software; businesses engaged in digital content production and preservation; computer processing and data preparation services; information retrieval services; and computer and data processing consultants and developers.

(ii) All businesses in this group must derive at least seventy-five percent (75%) of their revenue from out-of-state sales and have no retail sales to the general public;

(C) Businesses primarily engaged in commercial physical and biological research as classified by Standard Industrial Classification code 8731;

(D)(i) Businesses primarily engaged in motion picture productions.

(ii) All businesses in this group must derive at least seventy-five percent (75%) of their revenue from out-of-state sales and have no retail sales to the general public;

(E) A distribution center with no retail sales to the general public unless seventy-five percent (75%) of the sales revenues are from out-of-state customers;

(F) An office sector business with no retail sales to the general public; and

(G) A corporate or regional headquarters with no retail sales to the general public;

(7) "Financial incentive plan" means an agreement entered into by a business and the department to provide the business an incentive to locate a new facility or expand an existing facility in Arkansas;

(8) "Governing authority" means the quorum court of a county or the governing body of a municipality;

(9)(A) "High unemployment" means an unemployment rate equal to or in excess of one hundred fifty percent (150%) of the state's average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Department of Workforce Services, when the state's annual average unemployment rate is six percent (6%) or below.

(B) When the state's annual average unemployment rate is above six percent (6%), "high unemployment" means equal to or in excess of three percent (3%) above the state's average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Department of Workforce Services;

(10)(A)(i) "Net new full-time permanent employee" means a position or job which was created as a result of a project and which is filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned.

(ii) The position or job held by the employee or employees must have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week.

(B) However, in order to qualify for the provisions of this subchapter, a contractual employee must be offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter;

(11) "Office sector" means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that act as production centers are performed;

(12) The "payroll factor" of a project plant or facility is a fraction, the numerator being the total amount paid in this state during the tax

period by the project plant or facility for compensation to employees working in the plant or facility and the denominator being the total compensation paid in the taxpayer's Arkansas operations during the tax period;

(13) "Program" means this subchapter;

(14)(A) "Project" means the construction or expansion of an eligible business as defined in subdivision (6) of this section in Arkansas costing at least five million dollars (\$5,000,000), including the cost of the land, buildings, and equipment used in the construction or expansion, which has been approved by the department as a construction or expansion qualifying for tax benefits under this subchapter.

(B) The project cost shall include:

(i) All activities and costs associated with the construction of a new plant or facility;

(ii) All activities and costs associated with the expansion of an established plant or facility by adding to the building or production equipment or support infrastructure, or both; and

(iii) All activities and costs associated with the replacement of production or processing equipment or support infrastructure, or both.

(C) The project cost shall not include routine operating expenditures;

(15) The "property factor" of a project plant or facility is a fraction, the numerator being the average value of the taxpayer's real and tangible personal property owned or rented and used at the project plant or facility during the tax period and the denominator being the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period in Arkansas;

(16) "Regional headquarters" means the center of operations for a specific geographical area; and

(17) The "sales factor" of a project plant or facility is a fraction, the numerator being the total sales of the project plant or facility in this state during the tax period and the denominator being the total sales of the taxpayer's Arkansas operations during the tax period.

History. Acts 1995, No. 831, § 2; 1997, No. 540, § 87; 1997, No. 807, §§ 14, 15, 23; 1999, No. 575, § 1; 2001, No. 975, §§ 1-7; 2001, No. 1401, § 5.

A.C.R.C. Notes. Acts 2001, No. 1401, § 1, provided: "LEGISLATIVE INTENT. It is the intent of the General Assembly that expenditures for replacements of items previously purchased as part of a project and routine operating expenditures would not be eligible for benefits

under the Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq., or the Arkansas Economic Development Act of 1995, § 15-4-1901 et seq. These incentive program provisions are in need of clarification, and the purpose of the amendments in this act is to ensure that the original legislative intent is fulfilled."

Publisher's Notes. As amended by Acts 1997, No. 807, §§ 15 and 25, this section contained two subdivisions (13).

15-4-1903. Powers and duties of the Arkansas Economic Development Commission.

The Arkansas Economic Development Commission shall administer the provisions of this subchapter and shall have the following powers and duties in addition to those mentioned in this subchapter and in other laws of this state:

(1) To promulgate rules and regulations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to carry out the provisions of this subchapter;

(2)(A) To negotiate proposals on behalf of the state with prospective businesses which are considering locating a new facility or expanding an existing facility that would employ at least one hundred (100) net new full-time permanent employees and expend at least five million dollars (\$5,000,000) on the project.

(B)(i) For projects initiated after June 1, 2000, the commission is authorized to negotiate with a business a financial incentive plan granting an income tax credit based on total investment, without regard to how the project is financed, if it otherwise meets the qualifications of this act. The annual credit earned shall be based on the total investment divided by the term of the financial incentive plan.

(ii) The amount of credit that may be claimed each year will depend on the average hourly wage of the net new full-time permanent employees.

(iii) The amount of the income tax credit that may be claimed each year shall be negotiated in accordance with the following:

(a) When the average hourly wage, multiplied by forty (40), of the net new full-time permanent employee is between one hundred twenty-five percent (125%) and one hundred forty-nine percent (149%) of the lesser of the county or state annual average weekly wage per employee, the employer shall receive an annual income tax credit in the amount of fifty percent (50%) of the employer's state income tax liability;

(b) When the average hourly wage, multiplied by forty (40), of the net new full-time permanent employee is between one hundred fifty percent (150%) and one hundred seventy-four percent (174%) of the lesser of the county or state annual average weekly wage per employee, the employer shall receive an annual income tax credit in the amount of seventy-five percent (75%) of the employer's state income tax liability;

(c) When the average hourly wage, multiplied by forty (40), of the net new full-time permanent employee is one hundred seventy-five percent (175%) or more of the lesser of the county or state annual average weekly wage per employee, the employer shall receive an annual income tax credit in the amount of one hundred percent (100%) of the employer's state income tax liability; and

(d) If the average hourly wage, multiplied by forty (40), of the net new full-time permanent employee is less than one hundred twenty-

five percent (125%) of the lesser of the county or state annual average weekly wage per employee, the employer shall receive no tax credit under this section.

(iv) If the project is located in a high unemployment area, the Director of the Arkansas Economic Development Commission will consider all the factors of the project and negotiate with the business an income tax credit in an amount up to one hundred percent (100%) of the state income tax liability;

(3)(A) To provide the Department of Finance and Administration with a copy of each financial incentive plan entered into by the commission with each of the qualifying businesses so that the department will know the maximum amount of income tax credit the qualified business may claim during the term of the agreement.

(B)(i) The financial incentive plan shall specify the annual amount of payments, including principal and interest, the business will make to the lender in connection with the project financing and attach copies of the business' loan documents that reflect the amount of the annual payments.

(ii) For projects initiated after June 1, 2000, and which qualify for the incentives authorized by this subchapter regardless of financing, the financial incentive plan shall specify the amount of tax credit to be earned annually, based on estimates of total project investments, which shall be limited to land, buildings, and equipment and divided by the term of the financial incentive plan; and

(4) To collect a one-time fee of two thousand five hundred dollars (\$2,500) for the commission's administrative and legal fees associated with the preparation of the financial incentive plan.

History. Acts 1995, No. 831, § 3; 1999, 975, codified as §§ 15-4-1902, 15-4-1903, No. 575, § 2; 2001, No. 975, §§ 8-10. 15-4-1905, 15-4-1906.

Meaning of "this act". Acts 2001, No.

15-4-1904. Qualifications.

To qualify for the benefits of this subchapter, the business must:

(1) Be an eligible business as defined in § 15-4-1902;

(2) Hire at least one hundred (100) net new full-time permanent employees within twenty-four (24) months of the date the financial incentive plan was signed by the Arkansas Economic Development Commission and the business;

(3) Expend at least five million dollars (\$5,000,000) on the project covered by the financial incentive plan;

(4) Agree to certify to the Department of Finance and Administration the number of net new full-time permanent employees and the average hourly wage of the net new full-time permanent employees once the number of net new full-time permanent employees reaches one hundred (100); and

(5) Agree to certify to the department within thirty (30) days after the number of net new full-time permanent employees falls below one

hundred (100) or the average hourly wage falls below the amount specified in the financial incentive plan.

History. Acts 1995, No. 831, § 4; 1997, No. 807, § 16; 1999, No. 575, § 3.

15-4-1905. Financial incentive plan.

The financial incentive plan shall:

(1) Specify the tax incentives the business is to receive, including the maximum amount of income tax credit the business may claim for each tax year covered by the financial incentive plan;

(2)(A) Specify the term of the plan, which cannot exceed ten (10) years.

(B) The ten (10) years shall be calculated from the date the financial incentive plan is signed by the business and the Arkansas Economic Development Commission;

(3) Specify the annual tax credit earned based on total investment divided by the term of the financial incentive plan and attach copies of the business's loan documents which reflect the amount of the annual payments, or documents reflecting the amount of total investment in land, buildings, and equipment;

(4) Specify the amount of the average hourly wage the business must maintain to receive benefits under the plan;

(5) Specify the percentage of income tax liability against which the income tax credit may be claimed;

(6) Specify that the tax credits can never exceed the total amount of the debt service or for projects initiated after June 1, 2000, the total amount of the investment in land, buildings, and equipment; and

(7) Specify that after the term of the plan expires, the business may not claim any unused credit against income tax liability for subsequent tax years.

History. Acts 1995, No. 831, § 5; 2001, No. 975, §§ 11, 12.

15-4-1906. Refund of sales and use tax — Income tax credit.

(a)(1) The Revenue Division of the Department of Finance and Administration shall authorize a refund of sales and use taxes imposed by the state and a municipality or county if the municipality or county authorized the refund of its local tax on the purchases of the material used in the construction of a building or buildings or any addition or improvement thereon for housing any legitimate business enterprise and machinery and equipment to be located in or in connection with such a building.

(2) A refund shall not be authorized for routine operating expenditures.

(3)(A)(i) A refund shall not be authorized for the purchase of replacements of items previously purchased as part of a project under this

subchapter unless the items previously purchased will not enable the project to function as originally intended.

(ii) In order to qualify for a refund under this subchapter, the replacement of an item previously purchased must be necessary for the implementation or completion of the project.

(B) However, a program participant may make changes in a project by amendment to the financial incentive plan entered into with the Arkansas Economic Development Commission.

(4)(A) All claims for sales and use tax refunds under this subchapter shall be filed with the division within three (3) years from the date of the qualified purchase or purchases.

(B) Claims filed after three (3) years from the date of the qualified purchase or purchases shall be disallowed.

(5)(A) The time limitation in this section for filing claims shall be tolled if:

(i) A program participant fails to pay sales or use tax on an item that was taxable; and

(ii) The applicable tax is subsequently assessed as a result of an audit by the division.

(B) All claims for sales and use tax refunds relating to an audited purchase shall be filed with the division within one (1) year after payment of the assessed tax or the date of a final administrative or judicial order, whichever is later.

(6) A program participant that files a claim for a sales or use tax refund relating to an audited purchase shall be entitled to a refund of interest paid on the amount of tax assessed on the audited purchase if a refund is approved for the purchase.

(b)(1) A sales and use tax refund as provided for in subsection (a) of this section shall be authorized, provided that:

(A) The company is an eligible business as defined in § 15-4-1902;

(B) The business and its contractors give preference and priority to Arkansas manufacturers, suppliers, contractors, and labor, except when it is not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operational efficiency; and

(C)(i) The business:

(a) Files an endorsement resolution with the commission and the Department of Finance and Administration; and

(b) Files with the department a copy of the financial incentive plan the business entered into with the commission.

(ii) The endorsement resolution must be approved by the governing body of a municipality or county in whose jurisdiction the facility is located and must:

(a) Approve the specific entity's participation in the program; and

(b)(1) Specifically state whether the municipality or county authorizes the commission to refund local sales and use taxes to the entity under the program.

(2) A municipality or county can authorize the refund of all or part of a tax levied by it but cannot authorize the refund of any tax not levied by it.

(2)(A) The requisite number of net new full-time permanent employees must be employed by the business within twenty-four (24) months following the date the financial incentive plan was signed.

(B) In the event that the requisite number of net new full-time permanent employees cannot be employed within the twenty-four-month period, the business can file a written application with the commission explaining why additional time is necessary. The business can be afforded up to twenty-four (24) more months to hire the requisite number of employees if the Director of the Arkansas Economic Development Commission and the Chief Fiscal Officer of the State determine that the need for additional time is due to:

(i) Unanticipated and unavoidable delay in the construction of a facility that must be completed before the employees can be hired;

(ii) The project as originally planned will require more than twenty-four (24) months to complete; or

(iii) A change in the business ownership or business structure due to a merger or acquisition.

(c)(1)(A) The division shall authorize an income tax credit based on the total investment in land, buildings, and equipment divided by the term of the financial incentive plan for each tax year.

(B)(i) The amount of income tax credit taken during any tax year shall not exceed the Arkansas income tax liability resulting from the project plant or facility.

(ii) The income tax liability of the project plant or facility shall be determined by adding the sales factor, the payroll factor, and the property factor of the plant or facility and dividing the sum by three (3) to arrive at the project apportionment percentage. The total Arkansas corporate income tax liability of the corporation shall be multiplied by the project apportionment percentage to arrive at the income tax liability arising from the project.

(iii) The income tax credit available may then be used to offset the income tax liability arising from the project as agreed upon in the financial incentive plan.

(2) However, if the entire credit cannot be used in the year earned, the remainder may be applied against the income tax for the succeeding nine (9) tax years or until the financial incentive plan expires, whichever occurs first.

(d) An income tax credit as provided for in subsection (c) of this section shall be authorized, provided that:

(1) The request for such a credit is accompanied by an endorsement resolution approved by the governing body of the appropriate municipality or county in whose jurisdiction the establishment is to be located and a copy of the financial incentive plan the business entered into with the commission;

(2) All of the net new full-time permanent employees are employed at the facility; and

(3) Benefits for the same project are not being claimed under the Arkansas Economic Development Incentive Act of 1993, § 15-4-1601 et seq.

(e)(1)(A) If the number of net new full-time permanent employees drops below one hundred (100) after twenty-four (24) months from the date the financial incentive plan is signed, all benefits under the financial incentive plan will be terminated unless the Chief Fiscal Officer of the State approves a written request filed by the business explaining why the number of net new full-time permanent employees fell below one hundred (100).

(B) The Chief Fiscal Officer of the State may grant the business up to twenty-four (24) months to bring the number of net new full-time permanent employees back up to at least one hundred (100) and may approve the continuation of the benefits during that period.

(2) In the event that a business fails to notify the department that the number of employees has fallen below one hundred (100) or that the average hourly wage has fallen below the amount specified in the financial incentive plan, the business will be liable for the repayment of all benefits which were received by the business, plus penalty and interest.

(f)(1) Any business receiving benefits under this program shall be liable for the repayment of any benefits received, plus penalty and interest, if it does not comply with:

(A) The terms of the financial incentive plan;

(B) The requirements of this subchapter; or

(C) Any rule or regulation promulgated pursuant to this subchapter.

(2) The Chief Fiscal Officer of the State may bring any lawful action to recover any amount for which the recipient is liable.

History. Acts 1995, No. 831, § 6; 1997, No. 807, §§ 17, 18, 24; 1999, No. 575, § 4; 2001, No. 975, § 13; 2001, No. 1401, § 3.

A.C.R.C. Notes. Acts 2001, No. 1401, § 1, provided: "LEGISLATIVE INTENT. It is the intent of the General Assembly that expenditures for replacements of items previously purchased as part of a project and routine operating expendi-

tures would not be eligible for benefits under the Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq., or the Arkansas Economic Development Act of 1995, § 15-4-1901 et seq. These incentive program provisions are in need of clarification, and the purpose of the amendments in this act is to ensure that the original legislative intent is fulfilled."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Natural Resources, 24 U. Ark. Little Rock L. Rev. 513.

15-4-1907. Verification.

(a) The Department of Finance and Administration shall have the authority to obtain whatever information necessary from the participating businesses and from the Department of Workforce Services to verify that businesses which have entered into financial incentive plans with the Arkansas Economic Development Commission are complying with the terms of the financial incentive plans and reporting accurate

information concerning the number of employees and their payroll to the Department of Finance and Administration.

(b) The Department of Finance and Administration may promulgate rules and regulations necessary for the proper administration of the provisions of this subchapter.

History. Acts 1995, No. 831, § 7.

15-4-1908. Effect of participation.

Receiving benefits for a project pursuant to this subchapter will preclude a business from receiving benefits under any other tax incentive program for that same project.

History. Acts 1995, No. 831, § 8.

SUBCHAPTER 20 — DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT OF 2009

SECTION.

- 15-4-2001. Short title.
- 15-4-2002. Legislative intent.
- 15-4-2003. Definitions.
- 15-4-2004. Requirement for registration.
- 15-4-2005. Production rebate.
- 15-4-2006. Postproduction rebate.

SECTION.

- 15-4-2007. Application for rebate.
- 15-4-2008. Disbursement of rebate incentive.
- 15-4-2009. Penalties.
- 15-4-2010. Rules.
- 15-4-2011. Sunset.

Publisher's Notes. Former subchapter 20 which consisted of §§ 15-4-2001 – 15-4-2012, concerning the Motion Picture Incentive Act of 1997, has been repealed and reenacted by Acts 2009, No. 816, § 1. Historical information has been kept when and where possible. Former §§ 15-4-2009 and 15-4-2010 were not reused but were derived from the following sources:

15-4-2009. Acts 1997, No. 919, § 9.

15-4-2010. Acts 1997, No. 919, § 10.

Effective Dates. Acts 1997, No. 919, § 16: Mar. 28, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the incentive afforded by this Act to the motion picture industry can serve to stimulate the economy of the area in which filming is done; and that the incentive has a multiplier effect, in terms of economic development, in the locality of the filming and statewide; and that tax revenues generated by the activities of motion picture filming more than offset the revenue lost through the incentive provided by this Act. Therefore, an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2009, No. 816, § 4: Apr. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the incentives afforded by this Act to the digital content industry can serve to stimulate the economy of the area in which production and postproduction is performed; and that the incentives have a multiplier effect, in terms of economic development, in the locality of the production and statewide; and that tax revenues generated by the activities of digital content production and postproduction more than offset the rev-

enue lost through the incentives provided by this act. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Cross References. Motion picture tax incentives, § 26-4-201 et seq.

15-4-2001. Short title.

This subchapter may be referred to and cited as the “Digital Product and Motion Picture Industry Development Act of 2009”.

History. Acts 1997, No. 919, § 1; 2009, No. 816, § 1.

15-4-2002. Legislative intent.

It is the intent of the General Assembly to assist in cultivating the film industry by:

(1) Providing the citizens of Arkansas with the education, training, and financial tools to succeed in today’s global economy. The economic landscape of the state and the nation has moved from a manufacturing-based economy to one based on knowledge and technology, and to cultivate the state’s economy based upon knowledge and technology, by further developing the film and digital content industry in Arkansas;

(2) Providing the financial incentives needed to foster the long-term development of the digital medium and traditional film industry in Arkansas;

(3) Recognizing that similar incentives in surrounding states have been a catalyst for unprecedented economic growth within those states and that to create an effective mechanism for the sustained growth of the film industry in Arkansas will require the passage of legislation that establishes a film production incentive program that is not only competitive but also uniquely attractive to specific types of projects, production companies, and infrastructure creation;

(4) Recognizing that a successfully cultivated film industry will create a sector of high technology in Arkansas, a much-needed infusion of capital into areas of the state that may be economically depressed, and offer to Arkansans skilled labor employment opportunities that require knowledge and pay well;

(5) Recognizing that the temporary revenue loss to seed the initial growth will be offset by the film and digital content industry’s total value added to the Arkansas economy and directly offset through the state and local taxes collected on economic activity generated by the industry;

(6) Allowing Arkansas to become competitive with surrounding states that offer financial incentives to the film and digital content industry;

(7) Creating a vibrant film and digital content industry in Arkansas that will be essential to retain highly educated and creative individuals in Arkansas who want to pursue a career in this field;

(8) Recognizing that the state is uniquely qualified to attract digital form product providers to live, work, and play within its borders due to the state's natural settings, availability of labor and materials, climate, and the hospitality of its people; and

(9) Recognizing that the Motion Picture Incentive Act of 1983, previously codified at this subchapter, which was one of the first incentives offered to the motion picture industry and allowed the state and motion picture industry to develop a strong partnership, resulted in a significant increase in the number of movies filmed in Arkansas.

History. Acts 1997, No. 919, § 2; 2009, No. 816, § 1.

15-4-2003. Definitions.

As used in this subchapter:

(1)(A) "Below-the-line employees" means employees involved with the production of a motion picture production, including without limitation:

- (i) Casting assistants;
- (ii) Costume design;
- (iii) Gaffers;
- (iv) Grips;
- (v) Location managers;
- (vi) Production assistants;
- (vii) Set construction staff; and
- (viii) Set design staff.

(B) "Below-the-line employees" does not include actors, directors, producers, and writers;

(2)(A) "Film and digital product" means video images or other visual media entertainment content.

(B) "Film and digital product" includes without limitation:

- (i) Motion pictures;
- (ii) Documentaries;
- (iii) Long-form programs, specials, miniseries, series, music videos, and television programming;
- (iv) Interactive television;
- (v) Interactive games;
- (vi) Video games;
- (vii) Commercials;
- (viii) Digital media created primarily for distribution or exhibition to the general public; and
- (ix) A trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future

investment in either a product or a qualified production through any means and media in a digital media format, film, or videotape if the program meets all the underlying criteria of a qualified production;

(3) "Film office" means the division of the Arkansas Economic Development Council charged with the responsibility of promoting and assisting the digital content industry in Arkansas;

(4) "Financial institution" means any bank or savings and loan association in the state that carries Federal Deposit Insurance Corporation insurance;

(5)(A) "Highly compensated individual" means an individual who directly or indirectly receives compensation in excess of five hundred thousand dollars (\$500,000) for personal services with respect to a single production.

(B) An individual receives compensation indirectly when a production company pays a personal service company or an employee-leasing company that pays the individual;

(6)(A) "Postproduction" means a final stage in the production of digital content occurring after the action has been filmed or videotaped and involves editing and the addition of soundtracks.

(B) "Postproduction" includes without limitation editing, music, soundtracks, special effects, and credits;

(7) "Postproduction costs" means all expenditures incurred in the state in the postproduction phase of a state-certified production;

(8)(A) "Production" means the process of producing a type of entertainment content and includes film and digital product.

(B) "Production" shall not include:

(i) An ongoing program created primarily as news, weather, or financial market reports;

(ii) A production containing any material or performance that is obscene;

(iii) A production deemed an infomercial; or

(iv) Sexually explicit productions as defined in 18 U.S.C. § 2257, as it existed on January 1, 2009;

(9) "Production company" means a corporation, partnership, limited liability company, or other business entity engaged in the business of producing qualified productions and qualified by the Secretary of State to engage in business in the state;

(10)(A) "Qualified production costs" means costs incurred in Arkansas in the development, preproduction, production, or postproduction of a qualified production.

(B) "Qualified production costs" includes costs incurred concerning original music compositions produced by an Arkansas resident to be used as incidental music, the score, or the soundtrack in film or video games.

(C) "Qualified production costs" includes the cost to option or purchase intellectual property, including without limitation books, scripts, music, or trademarks relating to the development or purchase of a script, screenplay, or format if:

- (i) The intellectual property was produced primarily in Arkansas or the creator of the intellectual property is a resident of Arkansas;
- (ii) At least seventy-five percent (75%) of the subsequent film or digital content is produced in Arkansas; and

(iii) The production expenses or costs for the optioning or purchase are less than twenty-five percent (25%) of the production expenses or costs incurred in Arkansas. The expenses or costs include all expenditures associated with the optioning or purchase of intellectual property, including option money, agent fees, and attorney's fees relating to the transaction but do not include deferrals, deferments, royalties, profit participation, or recourse or nonrecourse loans that the eligible production company may negotiate in order to obtain the rights to the intellectual property.

(D) "Qualified production costs" does not include:

(i) The optioning or purchase of intellectual property that does not comply with the provisions of subdivision (8)(A) of this section;

(ii) Media buys, promotional events, or gifts or public relations associated with the promotion or marketing of any qualified production;

(iii) Deferred, leveraged, or profit participation costs relating to any and all personnel associated with any and all aspects of the production, including, but not limited to, producer fees, director fees, talent fees, and writer fees;

(iv) Amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the qualified production; and

(v) Salaries for highly compensated individuals;

(11) "Resident" means natural persons and includes, for the purpose of determining eligibility for the rebate incentive provided by this subchapter, a person domiciled in Arkansas and any other person who maintains a permanent residence within the state and spends in the aggregate at least six (6) months of the taxable year within the state; and

(12) "State-certified production" means a qualified production produced by an eligible production company that is:

(A) In compliance with established regulations to this subchapter;

(B) Authorized by the commission to conduct business in this state; and

(C) Approved by the commission as qualifying for a production rebate under this section.

History. Acts 1997, No. 919, § 3; 2009, No. 816, § 1.

15-4-2004. Requirement for registration.

(a) A production company that plans to operate within the borders of Arkansas shall register with the film office of the Arkansas Economic Development Commission before beginning operations.

(b)(1) Upon registration and signing a financial incentive agreement, the production company shall include the name of Arkansas in the credits.

(2) The Director of the Arkansas Economic Development Commission may waive this requirement if he or she determines that the state should not be acknowledged.

History. Acts 1997, No. 919, § 4; 2009, No. 816, § 1.

15-4-2005. Production rebate.

(a)(1) A production company, upon approval of the application by the Arkansas Economic Development Commission, shall be eligible for a rebate of fifteen percent (15%), with no cap per production, on all qualified production costs in connection with the production of a state-certified film project.

(2) An additional rebate of ten percent (10%) will be granted for the payroll of below-the-line employees who are full-time residents of Arkansas.

(b) To qualify for this rebate, a production company shall spend at least fifty thousand dollars (\$50,000) within a six-month period in connection with the production of one (1) project.

History. Acts 1997, No. 919, § 5; 2009, No. 816, § 1.

15-4-2006. Postproduction rebate.

(a)(1) A qualifying production company, upon approval of the application by the Arkansas Economic Development Commission, shall be eligible for a rebate of fifteen percent (15%), with no cap per production, on all qualified production costs in connection with the postproduction of a state-certified film project.

(2) An additional rebate of ten percent (10%) will be granted for the payroll of below-the-line employees who are full-time residents of Arkansas.

(b) To qualify for this rebate, a production company must spend at least fifty thousand dollars (\$50,000) within a six-month period in connection with the production of one (1) project.

History. Acts 2009, No. 816, § 1.

15-4-2007. Application for rebate.

(a)(1) To qualify for the rebates provided under this subchapter, a production company shall submit an application and provide an estimate of total expenditures to be made in Arkansas in connection with the production.

(2) The application and estimate of expenditures shall be filed with the Arkansas Economic Development Commission and be approved as

eligible for the rebate provided by this subchapter before the commencement of production in Arkansas.

(b)(1) After each production company submits an application, the commission will sign a financial incentive agreement with each eligible production company that qualifies under this subchapter and is approved by the commission.

(2)(A) The financial incentive agreement shall define the benefits to be received and the start and end date of the project.

(B) The financial incentive agreement shall include the:

(i) Effective date of the agreement;

(ii) Term of the agreement, which shall be calculated from the date the agreement is signed by the production company and the Revenue Division of the Department of Finance and Administration;

(iii) Incentive for which the production company may qualify;

(iv) Investment threshold requirements necessary to qualify for eligibility;

(v) Production company's responsibilities for certifying eligibility requirements; and

(vi) Production company's responsibilities for failure to meet or maintain eligibility requirements.

(c) At the time the production company registers and provides the estimate of expenditures to the commission, the production company also shall designate a member or representative to work with the commission and the division on the reporting of expenditures and other information necessary to qualify for the rebate.

(d) No later than ninety (90) days after the last production expenses or costs are incurred in the production of a qualified production, the production company shall:

(1) Apply to the commission for a production rebate certificate; and

(2) Provide a final expenditure report that includes the amount of the company's production expenses or costs.

(e)(1) To be eligible for the rebate incentive provided for by this subchapter, payments for production and postproduction expenses shall be made from a checking account from an Arkansas financial institution.

(2) Direct cash payments by a production company to Arkansas vendors, businesses, or citizens hired as cast or crew that are accompanied by receipts shall be allowed if the sum of the cash payments does not exceed forty percent (40%) of the total verifiable expenditures.

(3) Per diem expenditures by the cast or crew for lodging when accompanied by receipts shall be eligible expenditures.

(f) Expenditure reports also shall include information as required by the division to ensure compliance with this subchapter.

(g) Payments for salaries or wages shall be eligible for the rebate if they are reported to the division and are subject to state income taxes.

(h)(1) The employment rebate also entitles a state-certified production for an additional rebate for employing full-time residents of Arkansas.

(2) The employment rebate authorizes an additional credit of ten percent (10%) for the aggregate payroll of salaries and wages to Arkansas residents who are below-the-line employees of the state-certified production.

(i) The salary for an employee whose salary is equal to or greater than five hundred thousand dollars (\$500,000) shall be excluded from eligibility for either rebate.

(j) Payments for penalties or fines, payments to nonprofit organizations, and payments to federal and state entities that do not pay state taxes are not eligible.

(k) If a production company hires a payroll service company to handle the payroll of a production, the payroll payments shall be allowed as eligible expenditures provided:

(1) Payments made by the production company to the payroll service company are paid through an Arkansas financial institution account; and

(2) All eligible income payments to employees and independent contractors done through the payroll service are subject to Arkansas state income taxes.

(1)(1) The final expenditure report and all qualified production costs shall be subject to an audit by an outside certified public accountant licensed in the state.

(2) The eligible production company shall be responsible for paying all fees associated with the audit and final certification.

(m)(1) If the commission determines that the company is eligible for a rebate certificate, the commission shall enter on the certificate the amount of production expenses or costs that has been established to the satisfaction of the commission and the amount of the company's rebate.

(2) The commission shall provide a copy of the certificate to the Director of the Department of Finance and Administration.

History. Acts 1997, No. 919, § 6; 2009, No. 816, § 1.

15-4-2008. Disbursement of rebate incentive.

(a) The Revenue Division of the Department of Finance and Administration shall upon receipt of an application for a rebate:

(1) Calculate the total expenditures of the relevant production company for which there are documented receipts for funds expended in the state;

(2) Calculate the incentive benefit the applicant is entitled to; and

(3) Provide certification to the Director of the Department of Finance and Administration specifying the amount to be remitted to the production company within ninety (90) days after the final expenditure report has been submitted.

(b) The director, within ten (10) working days after the receipt of the certification from the division, shall remit the fifteen-percent rebate to:

(1) The production company; or

(2) At the option of the production company, the full amount or a specified amount noted by the production company to the:

(A) National Film Preservation Foundation;

(B) Motion Picture Retirement Fund; or

(C) Digital Product and Motion Picture Office Fund.

(c)(1) There is no per-production cap on the rebate, and the amount of the rebate shall be limited only by the amount of moneys in the Digital Product and Motion Picture Office Fund.

(2) The rebate shall be awarded on a first-come, first-served basis.

History. Acts 1997, No. 919, § 7; 2009, and motion picture office fund, § 19-6-814, No. 816, § 1.

Cross References. Digital product

15-4-2009. Penalties.

(a) A production company that intends to apply for the rebate and does not register as required by § 15-4-2004 may be enjoined from engaging in production activities in the state by any court of competent jurisdiction until the production company has registered.

(b) A production company that intends to apply for the rebate incentives and fails to comply with this subchapter may be denied future participation in this incentive program and shall be subject to penalty in accordance with applicable state or federal law.

History. Acts 1997, No. 919, § 8; 2009, No. 816, § 1.

15-4-2010. Rules.

The Arkansas Economic Development Commission shall promulgate appropriate rules to carry out the intent and purposes of this subchapter and to prevent abuse.

History. Acts 1997, No. 919, § 12; 2009, No. 816, § 1.

15-4-2011. Sunset.

The opportunity for a rebate provided by this subchapter shall expire on June 30, 2019.

History. Acts 1997, No. 919, § 11; 2009, No. 816, § 1.

SUBCHAPTER 21 — ARKANSAS EMERGING TECHNOLOGY DEVELOPMENT ACT OF 1999

SECTION.

15-4-2101 — 15-4-2107. [Repealed.]

15-4-2101 — 15-4-2107. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2009, No. 716, § 2. The subchapter was derived from the following sources:

15-4-2101. Acts 1999, No. 976, § 1; 2001, No. 1284, § 1.

15-4-2102. Acts 1999, No. 976, § 2; 2001, No. 1284, § 2.

15-4-2103. Acts 1999, No. 976, § 3; 2001, No. 1284, § 3.

15-4-2104. Acts 1999, No. 976, § 4; 2001, No. 1284, § 4.

15-4-2105. Acts 1999, No. 976, § 5; 2001, No. 1284, § 5.

15-4-2106. Acts 1999, No. 976, § 6.

15-4-2107. Acts 1999, No. 976, § 7.

SUBCHAPTER 22 — ARKANSAS WORKFORCE INVESTMENT ACT**SECTION.**

15-4-2201. Title.

15-4-2202. Purpose.

15-4-2203. Definitions.

15-4-2204. Arkansas Workforce Investment Board established.

15-4-2205. Arkansas Workforce Investment Board Executive Committee.

15-4-2206. Powers and duties of Arkansas Workforce Investment Board.

15-4-2207. State plan for workforce investment system strategy.

SECTION.

15-4-2208. Local workforce investment areas.

15-4-2209. Local workforce investment boards to be established.

15-4-2210. Certification of local workforce investment boards.

15-4-2211. Powers and duties of local workforce investment board.

15-4-2212. Local plan for workforce investment system strategy.

Effective Dates. Acts 1999, No. 1125, § 16: Apr. 6, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the provisions of this Act are of critical importance to preserve the efficient operation of programs that deliver services to the citizens of the State of Arkansas. The federal government has allocated funds to assist states in implementing a workforce investment plan and in order to receive those funds, Arkansas must begin to outline a proposal for approval by the United States Secretary of Labor. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1758, § 1: amendment effective by its own terms on Oct. 1, 2003.

Acts 2009, No. 1487, § 4: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Workforce Investment program provides important resources for economic development for Arkansas citizens; that the federal Workforce Investment Act of 1998 requires that Arkansas law precisely track federal requirements; and that this act is immediately necessary to ensure that the Arkansas Workforce Investment program continues to provide Arkansans with the opportunities made available through the federal act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by

the Governor and the veto is overridden, the date the last house overrides the veto.”

15-4-2201. Title.

This subchapter shall be known and may be cited as the “Arkansas Workforce Investment Act”.

History. Acts 1999, No. 1125, § 1.

15-4-2202. Purpose.

The purpose of this subchapter is to outline a workforce development plan for Arkansas and to comply with the federal Workforce Investment Act of 1998 by providing workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earning of participants, and increasing occupational skill attainment by participants, and as a result improving the quality of the workforce, reducing welfare dependency, and enhancing the productivity and competitiveness of the State of Arkansas.

History. Acts 1999, No. 1125, § 2.

section, is codified as 29 U.S.C.S. § 2801 et seq.

U.S. Code. The federal Workforce Investment Act of 1998, referred to in this

15-4-2203. Definitions.

As used in this subchapter:

(1) “Chief elected official” means:

(A) The chief elected executive officer of a unit of general local government in a local area.

(B) However, in a case in which a local area includes more than one (1) unit of general local government, the chief elected officials shall include the county judge or judges and the mayor or mayors of the city or cities of the first class. These officials may include other mayors, in accordance with the agreement cited in subdivision (1)(C) of this section;

(C) In a case in which a local area includes more than one (1) unit of general local government, the chief elected officials of each unit shall execute an agreement specifying the respective roles of the individual chief elected officials;

(2) “General local government” means any general purpose political subdivision of Arkansas that has the power to levy taxes and spend funds, as well as general corporate and police powers; and

(3) “Local educational agency” has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965.

History. Acts 1999, No. 1125, § 3.

1965, referred to in this section, was repealed by Pub. L. No. 107-110.

U.S. Code. Section 14101 of the Elementary and Secondary Education Act of

15-4-2204. Arkansas Workforce Investment Board established.

(a) There is created the Arkansas Workforce Investment Board.

(b)(1) The board shall consist of:

(A) The Governor;

(B) Two (2) members to be appointed by the President Pro Tempore of the Senate;

(C) Two (2) members to be appointed by the Speaker of the House of Representatives;

(D) The following members to be appointed by the Governor, subject to confirmation by the Senate:

(i) One (1) chief elected official nominated by the Arkansas Municipal League;

(ii) One (1) chief elected official nominated by the Association of Arkansas Counties;

(iii) No fewer than two (2) representatives of labor organizations to be nominated by the Arkansas Labor Federation;

(iv) No fewer than two (2) representatives of individuals and organizations who have experience with respect to youth activities and programs;

(v) No fewer than two (2) representatives of individuals and organizations who have experience and expertise in the delivery of workforce investment activities of which:

(a) One (1) member shall be a chief executive officer of a two-year college nominated by the Association of Two-year Colleges; and

(b) One (1) member shall represent a community-based organization;

(E) The Director of the Department of Career Education;

(F) The Director of the Department of Workforce Services;

(G) The Director of the Department of Human Services;

(H) The Director of the Arkansas Economic Development Commission;

(I) A representative of employment and training activities carried out by the United States Department of Housing and Urban Development;

(J) The Director of the Department of Higher Education;

(K) The Director of the Arkansas Rehabilitation Services of the Department of Career Education; and

(L) The Director of the Division of State Services for the Blind of the Department of Human Services.

(2) A majority of the members of the board shall be representatives of business in Arkansas who:

(A) Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority, including members of the local workforce investment boards;

(B) Represent businesses with employment opportunities reflecting the employment opportunities of Arkansas; and

(C) Are appointed from among individuals nominated by Arkansas business organizations and business trade associations.

(c)(1) In no event shall the board consist of more than forty-three (43) members.

(2) A person may serve in dual capacity as a member of the board.

(d) In appointing members, the Governor shall take into consideration that the board represents the diverse regions of Arkansas, including without limitation urban, rural, and suburban areas.

(e) Members of the board who represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within their respective organizations, agencies, and entities.

(f)(1) Nonlegislative members shall be appointed for four-year staggered terms.

(2) The staggered terms shall be assigned by lot.

(3) The terms shall begin on July 1 of each year.

(g) The Governor shall annually select on June 1 a chair for the board among the representatives of businesses described in subdivision (b)(1)(D) of this section.

(h) In the event of a vacancy on the board, the vacancy shall be filled for the unexpired portion of the term by the appointment of a person meeting the same qualifications required for initial appointment.

(i)(1) By a majority vote of the total membership of the board cast during its first regularly scheduled meeting of each calendar year, the board may authorize payment to its members of a stipend not to exceed one hundred ten dollars (\$110) per meeting attended. The board members shall receive no other compensation, expense reimbursement, or in-lieu-of payments as provided in § 25-16-902.

(2) The stipend shall be paid from the Arkansas Workforce Investment Fund.

(j) Legislative members shall receive in lieu of reimbursement for meals, lodging, and travel the same per diem and mileage allowance for each day of attending meetings of the board as is authorized by law for attending meetings of the interim committees of the General Assembly, to be payable from the Arkansas Workforce Investment Fund.

(k) A member of the board shall not:

(1) Vote on a matter under consideration by the board:

(A) Regarding the provision of services by the member or by an entity that the member represents; or

(B) That would provide direct financial benefit to the member or the immediate family of the member; or

(2) Engage in any other activity determined by the Governor or by law to constitute a conflict of interest.

(l) Meetings of the board shall be held at least quarterly or at the call of the chair or upon the written request of a majority of the members of the board.

History. Acts 1999, No. 1125, § 4; 2001, No. 1650, § 6; 2003, No. 1758, § 1; 2009, No. 1487, § 2.

Amendments. The 2009 amendment rewrote (b)(1) and inserted “optimum” in (b)(2)(A); inserted present (c) through (f) and (j), deleted former (h) and (i), and redesignated subsections accordingly; in-

serted “described in subdivision (b)(1)(D) of this section” in present (g); rewrote present (l); and made minor stylistic changes.

Effective Dates. Acts 2003, No. 1758, § 1: amendment effective by its own terms on Oct. 1, 2003.

15-4-2205. Arkansas Workforce Investment Board Executive Committee.

(a) In order to comply with the requirements and responsibilities assigned within this subchapter, the Arkansas Workforce Investment Board shall select from its membership an executive committee to be composed of at least thirteen (13) members but no more than fifteen (15) members.

(b) The chair and vice chair of the board shall serve as the chair and vice chair of the Arkansas Workforce Investment Board Executive Committee, respectively.

(c) The membership of the executive committee shall include:

(1) At least seven (7) business members, at least one (1) of whom serves on a local workforce investment board;

(2) At least two (2) Arkansas labor federation representatives;

(3) At least one (1) community college representative; and

(4) At least one (1) chief elected official.

(d) The board shall form such other committees as needed.

(e) Membership on any committee shall not extend beyond the term of service on the board.

(f) The executive committee shall meet at least one (1) time every other month and shall report to the board at the quarterly meetings.

(g) Compensation for the members of the executive committee shall be as provided in § 15-4-2204(i).

History. Acts 1999, No. 1125, § 5; 2005, No. 1171, § 1; 2005, No. 1962, § 60; 2007, No. 827, § 131.

A.C.R.C. Notes. As enacted by Acts 1999, No. 1125, § 5, subsection (f) began: “The executive board shall, beginning in August of 1999”.

Amendments. The 2005 amendment by No. 1171 substituted “at least one (1) time every other month” for “monthly” in (f).

The 2005 amendment by No. 1962, in (g), substituted “Compensation” for “Expense reimbursement and per diem allowance” and inserted “of the executive committee.”

The 2007 amendment substituted “thirteen (13)” for “eleven (11)” in (a); and deleted former (c)(3) and redesignated the remaining subdivisions accordingly.

15-4-2206. Powers and duties of Arkansas Workforce Investment Board.

(a) The Arkansas Workforce Investment Board shall advise and assist the Governor and the General Assembly in the:

(1) Development of a state workforce development plan;

(2) Development and continuous improvement of a statewide system of activities that are funded under this subchapter or carried out through a one-stop delivery system which receives funds under this subchapter including:

(A) Development of linkages in order to assure coordination and nonduplication among the programs and activities; and

(B) Review of local plans;

(3) Commenting on an annual basis on the measures taken pursuant to section 113(b)(14) of the Carl D. Perkins Vocational and Applied Technology Education Act;

(4) Designation of local workforce investment areas;

(5) Development of an allocation formula for the distribution of funds for adult employment and training activities and youth activities to local areas;

(6) Development and continuous improvement of comprehensive state performance measures, including state adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the state;

(7) Preparation of the annual report to the United States Secretary of Labor;

(8) Development of a statewide employment statistics system as described in section 15(e) of the Wagner-Peyser Act;

(9) Development of an application for an incentive grant;

(10) Recommendation of the programs identified in § 15-4-2207(b)(8)(A) which may be consolidated or realigned;

(11) Creation of workforce investment program accountability measures and standards;

(12) Development of workforce training standards;

(13) Evaluation of the entire Arkansas workforce investment system, including, but not limited to, the education system, the Career Development system, and the youth programs, to determine if it is meeting the goals of this subchapter;

(14) Reevaluation of this subchapter;

(15) Coordination of state agencies to assist in the development of the state workforce development plan;

(16) Development of additional state workforce development plans every three (3) years;

(17) Use of federal, state or private funds, donations, and grants made available for the development of the Arkansas workforce development plan;

(18) Establishing procedures that will be taken by the state to assure coordination of and to avoid duplication among workforce investment programs; and

(19) Provide a report prior to each regular session to the General Assembly with recommendations for appropriate statutory changes which may enhance the delivery of workforce investment in and for Arkansas.

(b) The board may recommend to the Governor the resolution of any disagreements between or among state agencies pertaining to their

duties and responsibilities in the state workforce investment plan. The board shall notify the agencies involved of the recommendation in writing.

(c) The board may recommend to the Governor that he or she require state agencies to cooperate with the board in implementing the state workforce investment plan, including, but not limited to, providing information to the board and providing staff assistance.

(d) The board shall have the authority to promulgate any rules or regulations necessary to carry out the provisions of this subchapter and to comply with the federal Workforce Investment Act of 1998.

(e) The board shall present a report quarterly to the Legislative Council concerning the progress, performance, and compliance with the federal Workforce Investment Act of 1998 and this subchapter and shall provide to the Legislative Council any information requested of it.

(f) Based upon measures established through subdivision (a)(11) of this section, the board shall recommend performance incentives and shall recommend sanctions for failure to achieve such measures.

(g)(1) The Director of the Arkansas Workforce Investment Board shall be appointed by the Governor with the consent of the board and be subject to confirmation by the Senate.

(2) The director shall hire the necessary staff to carry out the provisions of this subchapter.

History. Acts 1999, No. 1125, § 6.

Publisher's Notes. The reference to "section 113(b)(14) of the Carl D. Perkins Vocational and Applied Technology Education Act" in (a)(3) no longer exists.

U.S. Code. The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in this section, is codified as 20 U.S.C.S. § 2301 et seq.

The Wagner-Peyser Act, referred to in this section, is codified as 29 U.S.C.S. § 49 et seq.

The federal Workforce Investment Act of 1998, referred to in this section, is codified as 29 U.S.C.S. § 2801 et seq.

15-4-2207. State plan for workforce investment system strategy.

(a) By April 1, 2000, the Governor shall submit to the United States Secretary of Labor and other approval authorities, as appropriate, a state plan outlining the state's five-year strategy for the statewide workforce investment system of the state.

(b) The state plan shall include:

(1) A description of the state board, including a description of the manner in which the board collaborated in the development of the state plan and a description of how the board will continue to collaborate in carrying out the functions described in this section;

(2) A description of state-imposed requirements for the statewide workforce investment system;

(3) A description of the state performance accountability system developed for the workforce investment activities to be carried out through the statewide workforce investment system, including, but not limited to, information identifying state performance measures;

(4) Information describing:

(A) The needs of the state with regard to current and projected employment opportunities by occupation;

(B) The job skills necessary to obtain employment opportunities;

(C) The skills and economic development needs of the state; and

(D) The type and availability of workforce investment activities in the state;

(5) An identification of local areas designated in the state, including a description of the process used for the designation of the areas;

(6) An identification of criteria to be used by chief elected officials for the appointment of members of local boards;

(7) The detailed plans required under section 8 of the Wagner-Peyser Act, 29 U.S.C. § 49g;

(8)(A) A description of the procedures that will be taken by the state to assure coordination of and avoid duplication among:

(i) Workforce investment activities authorized under this subchapter;

(ii) Other activities authorized under this subchapter;

(iii) Programs authorized under the Wagner-Peyser Act, 29 U.S.C. § 49 et seq., title I of the Rehabilitation Act of 1973, 29 U.S.C. § 720 et seq., part A of title IV of the Social Security Act, 42 U.S.C. § 601 et seq., and section 6(d)(4) of the Food Stamp Act of 1977, 7 U.S.C. § 2015(d)(4); activities authorized under title V of the Older Americans Act of 1965, 42 U.S.C. § 3056 et seq.; and postsecondary vocational education activities authorized under the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. § 2301 et seq.;

(iv) Work programs authorized under section 6(o) of the Food Stamp Act of 1977, 7 U.S.C. § 2015(o);

(v) Activities authorized under chapter 2 of title II of the Trade Act of 1974, 19 U.S.C. § 2271 et seq.;

(vi) Activities authorized under chapter 41 of title 38, United States Code;

(vii) Employment and training activities carried out under the Community Services Block Grant Act, 42 U.S.C. § 9901 et seq.;

(viii) Activities authorized under the National and Community Service Act of 1990, 42 U.S.C. § 12501 et seq.;

(ix) Employment and training activities carried out by the Department of Housing and Urban Development; and

(x) Programs authorized under state unemployment compensation laws; and

(B) A description of the common data collection and reporting processes used for the programs and activities;

(9) A description of the process used by the state to provide an opportunity for public comment, including comment by representatives of businesses and representatives of labor organizations, and input into development of the plan, prior to submission of the plan;

(10) Information identifying how the state will use funds the state receives under this subchapter to leverage other federal, state, local,

and private resources in order to maximize the effectiveness of the resources and to expand the participation of business, employees, and individuals in the statewide workforce investment system;

(11) Assurances that the state will provide for fiscal control and fund accounting procedures that may be necessary to ensure the proper disbursement of and accounting for funds paid to the state;

(12)(A) A description of the methods and factors the state will use in distributing funds to local areas for youth activities and adult employment and training activities, including:

(i) A description of how the individuals and entities represented on the state board were involved in determining the methods and factors of distribution; and

(ii) A description of how the state consulted with chief elected officials in local areas throughout the state in determining the distribution;

(B) Assurances that the funds will be distributed equitably throughout the state, and that no local areas will suffer significant shifts in funding from year-to-year; and

(C) A description of the formula prescribed by the Governor for the allocation of funds to local areas for dislocated worker employment and training activities;

(13) Information specifying the actions that constitute a conflict of interest;

(14) With respect to the one-stop delivery systems, a description of the strategy of the state for assisting local areas in development and implementation of fully operational one-stop delivery systems in the state;

(15) A description of the appeals process;

(16) A description of the competitive process to be used by the state to award grants and contracts in the state for activities carried out under this subchapter;

(17) With respect to the employment and training activities for adults:

(A) A description of:

(i) The employment and training activities that will be carried out with the funds received by the state through the allotment;

(ii) How the state will provide rapid response activities to dislocated workers from funds reserved for the purposes, including the designation of an identifiable state rapid response dislocated worker unit to carry out statewide rapid response activities;

(iii) The procedures the local boards in the state will use to identify eligible providers of training services; and

(iv) How the state will serve the employment and training needs of dislocated workers, low-income individuals, individuals training for nontraditional employment, and other individuals with multiple barriers to employment; and

(B) An assurance that veterans will be afforded the employment and training activities by the state, to the extent practicable;

(18) With respect to youth activities, information:

(A) Describing the state strategy for providing comprehensive services to eligible youth, particularly those eligible youth who are recognized as having significant barriers to employment;

(B) Identifying the criteria to be used by local boards in awarding grants for youth activities, including criteria that the Governor and local boards will use to identify effective and ineffective youth activities and providers of the activities;

(C) Describing how the state will coordinate the youth activities carried out in the state with the services provided by Job Corps centers in the state; and

(D) Describing how the state will coordinate youth activities with activities carried out through the youth opportunity grants;

(19) A description of the eligibility criteria set by the state to certify training providers including postsecondary institutions certified under the Higher Education Act, apprenticeship programs registered under the National Apprenticeship Act, and other public or private providers of training. Criteria shall be established for both initial and subsequent eligibility and shall be applied equitably to all training providers. The state shall develop this criteria with input from the public and the training providers; and

(20) A description of how the state will ensure that local workforce investment board plans include information as to how they will support the Transitional Employment Assistance implementation plans for the counties in its service areas.

(c) The state plan submitted to the United States Secretary of Labor shall be considered to be approved by the United States Secretary of Labor at the end of the ninety-day period beginning on the day the United States Secretary of Labor receives the plan, unless the United States Secretary of Labor makes a written determination, during the ninety-day period, that:

(1) The plan is inconsistent with the provisions of this subchapter; and

(2) In the case of the portion of the plan described in section 8(a) of the Wagner-Peyser Act, 29 U.S.C. § 49g(a), the portion does not satisfy the criteria for approval.

(d) The state may submit modifications to a state plan in accordance with the requirements of this section as necessary during the five-year period covered by the plan.

(e) The General Assembly authorizes for inclusion in the state plan those programs referenced in section 501(b)(2)(A) of Pub. L. No. 105-220. Such inclusion shall have the concurrence of the State Board of Workforce Education and Career Opportunities.

History. Acts 1999, No. 1125, § 7.

U.S. Code. The Higher Education Act and the National Apprenticeship Act, referred to in subdivision (b)(19), are codified as 20 U.S.C. § 1001 et seq. and 29 U.S.C. §§ 50, 50a and 50b, respectively.

Pub. L. No. 105-220, referred to in subsection (e), is codified as 29 U.S.C. § 2801 et seq.

15-4-2208. Local workforce investment areas.

(a) No later than September 30, 1999, the Governor shall designate local workforce investment areas within the state:

(1) Through consultation with the Arkansas Workforce Investment Board; and

(2) After consultation with chief elected officials and after consideration of comments received through the public comment process, as described in section 112(b)(9) of the federal Workforce Investment Act of 1998.

(b) In making the designation of local areas, the Governor shall take into consideration the following:

(1) Geographic areas served by local educational agencies and intermediate educational agencies;

(2) Geographic areas served by postsecondary educational institutions and area vocational education schools;

(3) The extent to which the local areas are consistent with labor market areas;

(4) The distance that individuals will need to travel to receive services provided in the local areas; and

(5) The resources of the local areas that are available to effectively administer the activities carried out under this subchapter.

(c) The Governor shall approve any request for designation as a local area:

(1) From any unit of general local government with a population of five hundred thousand (500,000) or more;

(2) Of the area served by a rural concentrated employment program grant recipient of demonstrated effectiveness that served as a service delivery area or substate area under the Job Training Partnership Act, if the grant recipient has submitted the request; and

(3) Of an area that served as a service delivery area under section 101(a)(4)(A)(ii) of the Job Training Partnership Act as effective on September 1, 1999, in a state that has a population of not more than one million one hundred thousand (1,100,000) and a population density greater than nine hundred (900) persons per square mile.

(d)(1) The Governor shall approve any request made not later than the date of submission of the initial state plan under this subchapter for temporary designation as a local area from any unit of general local government, including a combination of the units, with a population of two hundred thousand (200,000) or more that was a service delivery area under the Job Training Partnership Act as effective on September 1, 1999, if the Governor determines that the area:

(A) Performed successfully in each of the last two (2) years prior to the request for which data are available in the delivery of services to participants under part A of title II and title III of the Job Training Partnership Act as effective on September 1, 1999; and

(B) Has sustained the fiscal integrity of the funds used by the area to carry out the activities.

(2) A temporary designation shall be for a period of not more than two (2) years, after which the designation shall be extended until the end of the period covered by the state plan if the Governor determines that, during the temporary designation period, the area substantially met the local performance measures for the local area and sustained the fiscal integrity of the funds used by the area to carry out activities under this subchapter.

(e) The Governor may approve a request from any unit of general local government for designation as a local area if the board, after consultation with and agreement of the local chief elected officials, recommends to the Governor that the area should be so designated.

(f) A unit of general local government or grant recipient that requests but is not granted designation of an area as a local area may submit an appeal to the board under an appeal process established in the state plan. If the appeal does not result in the designation, the United States Secretary of Labor, after receiving a request for review from the unit or grant recipient and on determining that the unit or grant recipient was not accorded procedural rights under the appeal process established in the state plan or that the area meets the requirements of this section, may require that the area be designated as a local area.

History. Acts 1999, No. 1125, § 8; 2005, No. 1962, § 61.

Amendments. The 2005 amendment deleted the final sentence in (e).

U.S. Code. The Job Training Partner-

ship Act, referred to in this section, was repealed by Pub. L. No. 105-220.

Section 112(b)(9) of the federal Workforce Investment Act of 1998, referred to in (a)(2), is codified as 29 U.S.C.S. § 2822.

15-4-2209. Local workforce investment boards to be established.

(a) There shall be established by January 15, 2000, in each local area of the state and certified by the Governor a local workforce investment board to set policy for the portion of the statewide workforce investment system within the local area.

(b) The Governor in partnership with the Arkansas Workforce Investment Board shall establish criteria for use by chief elected officials in the local areas for appointment of members of the local boards.

(c) At a minimum, the criteria shall require that the membership of each local board include a majority of representatives of business in the local area who:

(1) Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with policy-making or hiring authority;

(2) Represent businesses with employment opportunities that reflect the employment opportunities of the local area; and

(3) Are appointed from among individuals nominated by local business organizations and business trade associations.

(d) A majority of the members of the local board shall be representatives described in subsection (c) of this section.

(e) The chief elected official shall ensure that the local board membership shall reflect the same percentage of minorities as in the 2002 Federal Decennial Census for the local workforce investment areas of the board.

(f) The local board shall elect a chair for the local board from among the representatives described in subsection (c) of this section.

(g)(1) The chief elected official in a local area is authorized to appoint the members of the local board for the area in accordance with the state criteria.

(2) In the event a local area includes more than one (1) unit of general local government, the chief elected officials of the units shall execute an agreement that specifies the respective roles of the individual chief elected officials:

(A) In the appointment of the members of the local board from the individuals nominated or recommended to be the members in accordance with the criteria; and

(B) In carrying out any other responsibilities assigned to the officials under this section.

(3) If after a reasonable effort the chief elected officials are unable to reach agreement, the Governor may appoint the members of the local board from individuals so nominated or recommended.

(h)(1) A council of one-stop partners shall be established by the chief elected officials at the local board level that shall include, but not be limited to:

(A) Representatives of local educational entities selected from among individuals nominated by regional or local educational agencies, institutions, or organizations representing the local educational entities, including:

(i) Representatives of local educational agencies;

(ii) Local school boards;

(iii) Two-year colleges and universities;

(iv) Entities providing adult education and literacy activities; and

(v) Postsecondary educational institutions;

(B) Representatives of labor organizations nominated by Arkansas local labor federations, or other representatives of employees if no employees are represented by labor organizations;

(C) Representatives of community-based organizations;

(D) Representatives of economic development agencies, including private sector economic development entities;

(E) Representatives of each of the one-stop partners;

(F) One (1) member who is a person with a disability and who is familiar with vocational rehabilitation and:

(i) Represents an organization of Arkansans with disabilities; or

(ii) Complies with subsection (c) of this section; and

(G) One (1) member who represents veterans' organizations.

(2) The council may include other individuals or representatives of entities as the chief elected official in the local area may determine to be appropriate.

History. Acts 1999, No. 1125, § 9; § 2: amendment effective by its own terms 2003, No. 1758, § 2. on Oct. 1, 2003.

Effective Dates. Acts 2003, No. 1758,

15-4-2210. Certification of local workforce investment boards.

(a) One (1) time every two (2) years, the Governor shall certify one (1) local board for each local area in the state.

(b) The certification shall be based on criteria established under § 15-4-2209 and, for a second or subsequent certification, the extent to which the local board has ensured that workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures.

(c) Failure of a local board to achieve certification shall result in reappointment and certification of another local board.

(d) The Governor may decertify a local board at any time after providing notice and an opportunity for comment for:

(1) Fraud or abuse; or

(2) Failure to carry out the functions specified for the local board.

(e) The Governor may decertify a local board if a local area fails to meet the local performance measures for the local area for two (2) consecutive years.

(f) If the Governor decertifies a local board for a local area, the Governor may require that a new local board be appointed and certified for the local area pursuant to a reorganization plan developed by the Governor, in consultation with the chief elected official in the local area.

History. Acts 1999, No. 1125, § 10.

15-4-2211. Powers and duties of local workforce investment board.

(a) The functions of the local board shall include the following:

(1) Development of a local plan in accordance with § 15-4-2212;

(2) The local board, with the agreement of the chief elected official:

(A) Shall designate or certify one-stop operators; and

(B) May terminate for cause the eligibility of the operators;

(3) The local board shall identify eligible providers of youth activities in the local area by awarding grants or contracts on a competitive basis, based on the recommendations of the youth council;

(4) The local board shall identify eligible providers of training services using criteria established by the state;

(5) If the one-stop operator does not provide intensive services in a local area, the local board shall identify eligible providers of intensive services in the local area;

(6) The local board shall develop a budget for the purpose of carrying out the duties of the local board under this section, subject to the approval of the chief elected official; and

(7) The local board shall annually provide a progress report to the Arkansas Workforce Investment Board.

(b) The chief elected official in a local area shall serve as the local grant recipient for and shall be liable for any misuse of the grant funds allocated to the local area, unless the chief elected official reaches an agreement with the Governor for the Governor to act as the local grant recipient and bear the liability.

(c) In order to assist in the administration of the grant funds, the chief elected official or the Governor, when the Governor serves as the local grant recipient for a local area, may designate an entity to serve as a local grant subrecipient for the funds or as a local fiscal agent. The designation shall not relieve the chief elected official or the Governor of the liability for any misuse of grant funds.

(d) The local grant recipient or an entity shall disburse the funds for workforce investment activities at the direction of the local board, pursuant to the requirements of this subchapter. The local grant recipient or entity shall disburse the funds immediately on receiving the direction from the local board.

(e) The local board may contract for some or all of its administrative services in an amount consistent with the grant, but in no case shall the cost of administrative services exceed fifteen percent (15%) of the total cost of the program.

(f) The local board may solicit and accept grants and donations from sources other than federal funds.

(g) The local board, in partnership with the chief elected official, shall conduct oversight with respect to local programs of youth activities, local adult employment and training, and the one-stop delivery system in the local area.

(h) The local board, the chief elected official, and the Governor shall negotiate and reach an agreement on local performance measures.

(i) The local board shall assist the Governor in developing the statewide employment statistics system described in section 15(e) of the Wagner-Peyser Act as effective on September 1, 1999.

(j) The local board shall coordinate the workforce investment activities carried out in the local area with economic development strategies and develop other employer linkages with the activities.

(k) The local board shall promote the participation of private sector employers in the statewide workforce investment system and ensure the effective provision through the system of connecting, brokering, and coaching activities through intermediaries like the one-stop operator in the local area or through other organizations to assist the employers in meeting hiring needs.

(l)(1) No local board may provide training services unless pursuant to a request from the Governor the local board grants a written waiver of the prohibition for a program of training services, if the local board:

(A) Submits to the Governor a proposed request for the waiver that includes:

(i) Satisfactory evidence that there is an insufficient number of eligible providers of the program of training services to meet local demand in the local area; and

(ii) Information demonstrating that:

(a) The local board meets the requirements for an eligible provider of training services; and

(b) The program of training services prepares participants for an occupation that is in demand in the local area;

(B) Makes the proposed request available to eligible providers of training services and other interested members of the public for a public comment period of not less than thirty (30) calendar days; and

(C) Includes in the final request for a waiver the evidence and information described in subdivisions (1)(1)(A) and (B) of this section.

(2) A waiver granted to a local board shall apply for a period not to exceed one (1) year. The waiver may be renewed for additional periods not to exceed one (1) year, pursuant to requests from the local board.

(3) The Governor may revoke a waiver granted if the state determines that the local board involved has engaged in a pattern of inappropriate referrals to training services operated by the local board.

(m) Nothing in this section shall be construed to provide a local board with the authority to mandate curricula for schools.

(n) A member of a local board may not:

(1) Vote on a matter under consideration by the local board:

(A) Regarding the provision of services by the member or by an entity that the member represents; or

(B) That would provide direct financial benefit to the member or the immediate family of the member; or

(2) Engage in any other activity determined by the Governor or by law to constitute a conflict of interest as specified in the state plan.

(o)(1) There shall be established as a subgroup within each local board a youth council appointed by the local board, in cooperation with the chief elected official for the local area.

(2)(A) The membership of each youth council shall include:

(i) Members of the local board with special interest or expertise in youth policy;

(ii) Representatives of youth service agencies, including juvenile justice and local law enforcement agencies;

(iii) Representatives of local public housing authorities;

(iv) Parents of eligible youth seeking assistance under this subchapter;

(v) Individuals, including former participants, and representatives of organizations that have experience relating to youth activities; and

(vi) Representatives of the Job Corps, as appropriate.

(B) The membership of each youth council may include other individuals as the chair of the local board, in cooperation with the chief elected official, determines to be appropriate.

(3) Members of the youth council who are not members of the local board shall be voting members of the youth council and nonvoting members of the board.

(4) The duties of the youth council include:

(A) Developing the portions of the local plan relating to eligible youth, as determined by the chair of the local board;

(B) Subject to the approval of the local board:

(i) Recommending eligible providers of youth activities, to be awarded grants or contracts on a competitive basis by the local board to carry out the youth activities; and

(ii) Conducting oversight with respect to the eligible providers of youth activities in the local area;

(C) Coordinating youth activities in the local area; and

(D) Other duties determined to be appropriate by the chair of the local board.

(p) A local board may provide core services or intensive services, or both, as defined in the federal Workforce Investment Act of 1998, or may be designated or certified as a one-stop operator, only with the agreement of the chief elected official or officials and the Governor.

History. Acts 1999, No. 1125, § 11. referred to in this section, is codified as 29
U.S. Code. The Wagner-Peyser Act, U.S.C.S. § 49 et seq.

15-4-2212. Local plan for workforce investment system strategy.

(a) Each local board shall develop and submit to the Governor a comprehensive five-year local plan in partnership with the appropriate chief elected official. The plan shall be consistent with the state plan and shall be updated every three (3) years thereafter.

(b) The local plan shall include:

(1) An identification of:

(A) The workforce investment needs of businesses, job seekers, and workers in the local area;

(B) The current and projected employment opportunities in the local area; and

(C) The job skills necessary to obtain the employment opportunities;

(2) A description of the one-stop delivery system to be established or designated in the local area, including:

(A) A description of how the local board will ensure the continuous improvement of eligible providers of services through the system and ensure that the providers meet the employment needs of local employers and participants; and

(B) A copy of each memorandum of understanding concerning the operation of the one-stop delivery system in the local area;

(3) A description of the local levels of performance negotiated with the Governor and chief elected official to be used to measure the performance of the local area and to be used by the local board for measuring the performance of the local fiscal agent, eligible providers, and the one-stop delivery system, in the local area;

(4) A description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area;

(5) A description of how the local board will coordinate workforce investment activities carried out in the local area with statewide rapid response activities, as appropriate;

(6) A description and assessment of the type and availability of youth activities in the local area, including an identification of successful providers of the activities;

(7) A description of the process used by the local board to provide an opportunity for public comment, including comment by representatives of businesses and comment by representatives of labor organizations, and input into the development of the local plan, prior to submission of the plan;

(8) An identification of the entity responsible for the disbursal of grant funds as determined by the chief elected official or the Governor;

(9) A description of the competitive process to be used to award the grants and contracts in the local area for activities carried out under this subchapter; and

(10) Other information as the Governor may require.

(c) Prior to the date on which the local board submits a local plan under this section, the local board shall:

(1) Make available copies of a proposed local plan to the public through public hearings and local news media;

(2) Allow members of the local board and members of the public, including representatives of business and representatives of labor organizations, to submit comments on the proposed local plan to the local board, not later than the end of the thirty-calendar-day period beginning on the date on which the proposed local plan is made available; and

(3) Include with the local plan submitted to the Governor under this section any comments that represent a disagreement with the plan.

(d) The local plan submitted to the Governor under this section shall be considered to be approved by the Governor at the end of the ninety-day period beginning on the day the Governor receives the plan, unless the Governor makes a written determination during the ninety-day period that:

(1) Deficiencies in activities carried out under this subchapter have been identified through audits or otherwise, and the local area has not made acceptable progress in implementing corrective measures to address the deficiencies; or

(2) The plan does not comply with this subchapter.

History. Acts 1999, No. 1125, § 12.

SUBCHAPTER 23 — ARKANSAS PUBLIC ROADS IMPROVEMENTS CREDIT ACT

SECTION.

15-4-2301. Title.

15-4-2302. Legislative intent.

15-4-2303. Definitions.

15-4-2304. Approval of projects.

15-4-2305. Public Roads Incentive Fund.

SECTION.

15-4-2306. Tax credit.

15-4-2307. Powers and duties of the Arkansas Economic Development Commission.

Effective Dates. Acts 1999, No. 1347, § 5: Apr. 12, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the State's program for capital improvements for public roads and financing thereof is inadequate, that the economic and other benefits to the state and its people resulting from capital improvements are essential to the people of Arkansas, and that providing tax credits to taxpayers for contributions in aid of construction of public roads will encourage public and private participation and thereby promote the economic welfare of

this state and its people and the public interest. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-4-2301. Title.

This subchapter may be referred to and cited as the "Arkansas Public Roads Improvements Credit Act".

History. Acts 1999, No. 1347, § 1.

15-4-2302. Legislative intent.

The General Assembly finds and declares that:

- (1) The state's program for capital improvements for public roads projects and the financing of those projects is inadequate;
- (2) The economic and other benefits to the state and its people resulting from capital improvements for public roads projects are essential to the public health, safety, and welfare of the people of Arkansas; and
- (3) Providing tax credits to taxpayers for contributions in aid of construction of capital improvements for public roads projects will encourage public and private participation in these capital improvement projects, will promote the economic welfare of this state and its people, and is in the public interest.

History. Acts 1999, No. 1347, § 1.

15-4-2303. Definitions.

As used in this subchapter:

- (1) "Capital improvements" means capital improvements for public roads;
- (2) "Commission" means the Arkansas Economic Development Commission;
- (3) "Contribution" means a contribution in aid of construction of a public roads project made by a taxpayer to the Public Roads Incentive Fund;
- (4) "Council" means the Arkansas Economic Development Council;
- (5) "County" means any county in the State of Arkansas;

(6) “Director” means the Director of the Arkansas Economic Development Commission;

(7) “Fund” means the Public Roads Incentive Fund;

(8) “Governing authority” means the quorum court of a county, the governing body of a municipality, and the State Highway Commission;

(9) “Municipality” means any city or incorporated town in the State of Arkansas;

(10) “Project” means all, any combination, or any part of the capital improvements for public roads which are authorized by a governing authority and approved by the director;

(11) “Public roads” means roads maintained by a governing authority; and

(12) “Taxpayer” includes any individual, fiduciary, or corporation subject to Arkansas state income tax.

History. Acts 1999, No. 1347, § 1.

15-4-2304. Approval of projects.

Governing authorities may apply to the Director of the Arkansas Economic Development Commission for funding assistance for capital improvement projects for public roads as provided by this subchapter. The director is authorized to approve capital improvements for funding assistance upon a finding that a project is in the public interest.

History. Acts 1999, No. 1347, § 1.

15-4-2305. Public Roads Incentive Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Public Roads Incentive Fund” of the Arkansas Economic Development Council.

(b) The fund shall consist of contributions made by taxpayers for public roads projects approved by the Director of the Arkansas Economic Development Commission and any other funds as are designated or deposited to the fund by law.

(c)(1) A separate account shall be established for each project, and contributions for a project shall be applied to provide funding assistance for such a project.

(2) Any contributions which remain in the fund when a project is completed or terminated shall be held and applied to other public roads projects in such manner as the director shall direct.

History. Acts 1999, No. 1347, § 1.

15-4-2306. Tax credit.

(a) A taxpayer shall be entitled to a credit against any Arkansas income tax liability which may be imposed on the taxpayer for any tax

year commencing on or after January 1, 1999, for contributions transmitted to the Treasurer of State pursuant to this subchapter.

(b) The credit shall be determined in the following manner:

(1) The credit is limited to an amount not to exceed thirty-three percent (33%) of the taxpayer's contribution;

(2) In any one (1) tax year, the credit allowed by this section shall not exceed fifty percent (50%) of the net Arkansas state income tax liability of the taxpayer after all other credits and reductions in tax have been calculated; and

(3) Any credit in excess of the amount allowed by subdivision (b)(2) of this section for any one (1) tax year may be carried forward and applied against any Arkansas state income tax liability for the next-succeeding tax year and annually thereafter for a total period of three (3) years next succeeding the year in which the credit arose, subject to the provisions of subdivision (b)(2) of this section or until the credit is exhausted, whichever occurs first.

History. Acts 1999, No. 1347, § 1.

15-4-2307. Powers and duties of the Arkansas Economic Development Commission.

The Arkansas Economic Development Commission shall administer the provisions of this subchapter and shall have the following powers and duties, in addition to those mentioned in this subchapter and in other laws of this state:

(1) To monitor the implementation and operation of this subchapter and to conduct a continuing evaluation of the progress made;

(2) To assist the governing authority in obtaining assistance from any other department of state government;

(3) To submit an annual written report evaluating the effectiveness of the program and presenting any suggestions for improving the program, to be submitted to the Governor no later than March 1 of each year; and

(4) To promulgate rules and regulations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to carry out the provisions of this subchapter.

History. Acts 1999, No. 1347, § 1.

SUBCHAPTER 24 — STEEL MANUFACTURERS' TAX EXEMPTIONS AND CREDITS

SECTION.

15-4-2401. Definitions.

15-4-2402. Certification required.

15-4-2403. Exemption from taxes.

15-4-2404. Net operating loss deduction
— Carry forward.

15-4-2405. Extension of recycling tax

SECTION.

credit — Postconsumer waste.

15-4-2406. Refund of recycling tax credit.

15-4-2407. Apportionment of credit amount.

15-4-2401. Definitions.

As used in this subchapter:

(1) "Invested" includes, but is not limited to, expenditures made from the proceeds of bonds, including interim notes or other evidence of indebtedness, issued by a municipality, county, or an agency or instrumentality of a municipality, county, or the State of Arkansas, if the obligation to repay the bonds, including interest thereon, is a legally binding obligation, directly or indirectly, of the taxpayer;

(2) "Production, processing, and testing equipment" includes machinery and equipment essential for the receiving, storing, processing, and testing of raw materials and the production, storage, testing, and shipping of finished products, and facilities for the production of steam, electricity, chemicals, and other materials that are essential to the manufacturing process but which are consumed in the manufacturing process and do not become essential components of the finished product; and

(3) "Qualified manufacturer of steel" means any natural person, company, or corporation engaged in the manufacture, refinement, or processing of steel whenever more than fifty percent (50%) of the electricity or more than fifty percent (50%) of the natural gas consumed in the manufacture, refinement, or processing of steel is used to power an electric arc furnace or furnaces, continuous casting equipment, or rail steel mill equipment in connection with the melting, continuous casting, or rolling of steel or in the preheating of steel for processing through a rail steel mill.

History. Acts 2001, No. 541, § 1.

15-4-2402. Certification required.

To claim the benefits of this subchapter, a taxpayer must obtain a certification prior to December 31, 2006, from the Director of the Arkansas Economic Development Commission certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer:

(1) Is a qualified manufacturer of steel;

(2) Operates a steel mill in Arkansas which began production after January 1, 2001; and

(3) Has invested after January 1, 2001, and prior to December 31, 2006, more than two hundred million dollars (\$200,000,000) in a steel mill, and the investment expenditure is for one (1) or more of the following:

(A) Property purchased for use in the construction of a building or buildings or any addition or improvement thereon to house the steel mill;

(B)(i) Machinery and equipment to be located in or in connection with the steel mill.

(ii) Motor vehicles of a type subject to registration shall not be considered as machinery and equipment; and

(C) Project planning costs or construction labor costs, including:

- (i) On-site direct labor and supervision, whether employed by a contractor or the project owner;
- (ii) Architectural fees or engineering fees, or both;
- (iii) Right-of-way purchases;
- (iv) Utility extensions;
- (v) Site preparation;
- (vi) Parking lots;
- (vii) Disposal or containment systems;
- (viii) Water and sewer treatment systems;
- (ix) Rail spurs;
- (x) Streets and roads;
- (xi) Purchase of mineral rights;
- (xii) Land;
- (xiii) Buildings;
- (xiv) Building renovation;
- (xv) Production, processing, and testing equipment;
- (xvi) Drainage systems;
- (xvii) Water tanks and reservoirs;
- (xviii) Storage facilities;
- (xix) Equipment rental;
- (xx) Contractor's cost-plus fees;
- (xxi) Builders' risk insurance;
- (xxii) Original spare parts;
- (xxiii) Job administrative expenses;
- (xxiv) Office furnishings and equipment;
- (xxv) Rolling stock; and
- (xxvi) Capitalized start-up costs related to the construction.

History. Acts 2001, No. 541, § 2.

15-4-2403. Exemption from taxes.

Sales of natural gas and electricity to taxpayers qualified to receive the benefits of this subchapter for use in connection with the steel mill shall be exempt from the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and any other state or local tax administered under those acts.

History. Acts 2001, No. 541, § 3.

A.C.R.C. Notes. The Arkansas Gross Receipts Act of 1941, referred to in this section, is codified as §§ 26-52-101 — 26-

52-107, 26-52-201 — 26-52-208, 26-52-301, 26-52-303, 26-52-306, 26-52-307, 26-52-401, 26-52-402, 26-52-501 — 26-52-503, 26-52-508, 26-52-510.

15-4-2404. Net operating loss deduction — Carry forward.

(a) Taxpayers qualified for the benefits of this subchapter and entitled to a net operating loss deduction as provided in § 26-51-427 may carry forward that deduction to the next-succeeding taxable year

following the year of the net operating loss and annually thereafter for a total period of ten (10) years or until the net operating loss has been exhausted, whichever is earlier.

(b) The net operating loss deduction must be carried forward in the order named in subsection (a) of this section.

History. Acts 2001, No. 541, § 4.

15-4-2405. Extension of recycling tax credit — Postconsumer waste.

(a)(1) A qualified manufacturer of steel which has been certified by the Director of the Arkansas Economic Development Commission after January 1, 2001, and prior to December 31, 2006, as qualifying for the benefits of this subchapter and has qualified for the income tax credit for the purchase of waste reduction, reuse, or recycling equipment provided by § 26-51-506, may carry forward any unused income tax credit earned under § 26-51-506 for a period of fourteen (14) consecutive years following the taxable year in which the credit originated.

(2) Income tax credits which would otherwise expire during that period shall first be used.

(b) In the case of a qualified manufacturer of steel as described in subsection (a) of this section:

(1) The term “waste reduction, reuse, or recycling equipment” as defined in § 26-51-506 shall include production, processing, and testing equipment used to manufacture products containing recovered materials; and

(2)(A) The provisions of § 26-51-506(d)(4) shall not apply.

(B) However, the qualified manufacturer of steel shall make a good faith effort to use recovered materials containing Arkansas post-consumer waste as a part of the materials used.

History. Acts 2001, No. 541, § 5.

15-4-2406. Refund of recycling tax credit.

(a)(1) In the case of a qualified manufacturer of steel as described in § 15-4-2405(a), the provisions of § 26-51-506(f) shall not apply.

(2) However, the qualified manufacturer of steel shall refund the amount of the tax credit provided by subsection (b) of this section if within three (3) years of the taxable year in which the credit originated:

(A)(i) The waste reduction, reuse, or recycling equipment is removed from Arkansas, disposed of, or transferred to another person, or the qualified manufacturer of steel otherwise ceases to use the required materials or operate in accordance with § 26-51-506.

(ii) However, reorganization transactions, changes of ownership and control, and sales and transfers of waste reduction, reuse, or recycling equipment among affiliates which do not constitute sales or transfers to a third-party purchaser shall not be considered disposals, transfers, or cessations of use for purposes of § 26-51-506; or

(B) The Director of the Arkansas Department of Environmental Quality finds that the qualified manufacturer of steel has operated the waste reduction, reuse, or recycling equipment in a manner which demonstrates a pattern of intentional failure to comply with final administrative or judicial orders which clearly indicates a disregard for environmental regulation.

(b) If the provisions of subsection (a) of this section apply, the qualified manufacturer of steel shall refund the amount of the tax credit which was deducted from income tax liability which exceeds the following amounts:

- (1) Within the first year, zero dollars (\$0.00);
- (2) Within the second year, an amount equal to thirty-three percent (33%) of the amount of credit allowed; and
- (3) Within the third year, an amount equal to sixty-seven percent (67%) of the credit allowed.

(c) Any refund required by subdivision (a)(2)(A) of this section shall apply only to the credit given for the particular waste reduction, reuse, or recycling equipment to which that subdivision applies.

(d) Any taxpayer who is required to refund part of a credit pursuant to this section shall no longer be eligible to carry forward any amount of that credit which had not been used as of the date the refund is required.

(e) Any person or legal entity aggrieved by a decision of the director under this section may appeal to the Arkansas Pollution Control and Ecology Commission through administrative procedures adopted by the commission and to the courts in the manner provided in §§ 8-4-222 — 8-4-229.

History. Acts 2001, No. 541, § 6.

15-4-2407. Apportionment of credit amount.

In the case of a qualified manufacturer of steel as described in § 15-4-2405(a) which is:

(1) A proprietorship, partnership, or other business organization treated as a proprietorship or partnership for tax purposes, the amount of the credit determined under this subchapter for any taxable year shall be apportioned to each proprietor, partner, member, or other owner in proportion to the amount of income from the entity which the proprietor, partner, member, or other owner is required to include in gross income;

(2) A Subchapter S corporation, the amount of credit determined shall be apportioned to each Subchapter S corporation shareholder in proportion to the amount of income from the entity which the Subchapter S corporation shareholder is required to include as gross income; or

(3) An estate or trust:

(A) The amount of the credit determined for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each; and

(B) Any beneficiary to whom any amount has been apportioned under this subchapter shall be allowed, subject to the limitations contained in this subchapter, a credit under this subchapter for that amount.

History. Acts 2001, No. 541, § 7.

SUBCHAPTER 25 — SMALL BUSINESS LOAN COLLABORATION PROGRAM

SECTION.

15-4-2501. Definitions.

15-4-2502. Fifty-percent loan subsidy program.

15-4-2503. Lender application — Approval.

SECTION.

15-4-2504. Supporting documents.

15-4-2505. Duty to seek collaboration.

15-4-2506. Regulations.

A.C.R.C. Notes. Acts 2001, No. 913, § 1, provided: “Nothing in this act shall be construed to terminate or in any way interfere with the continuing operations

of the program established under Act 448 of 1999 before the effective date of this act.”

15-4-2501. Definitions.

As used in this subchapter:

(1) “Commission” means the Arkansas Economic Development Commission;

(2) “Community lender” means any organization that is involved in making loans to small businesses within this state;

(3) “Council” means the Arkansas Economic Development Council;

(4) “Director” means the Director of the Arkansas Economic Development Commission;

(5)(A) “High unemployment” means an unemployment rate equal to or greater than one hundred fifty percent (150%) of the state’s average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Department of Workforce Services, when the state’s annual average unemployment is six percent (6%) or lower.

(B) However, when the state’s unemployment rate is above six percent (6%), “high unemployment” means unemployment equal to or greater than three percent (3%) above the state’s average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Department of Workforce Services;

(6) “Small business” means business enterprises with fewer than fifty (50) full-time employees and less than one million dollars (\$1,000,000) in annual gross sales or receipts; and

(7) "Small-business person" means an individual, firm, partnership, limited liability company, corporation, or any other business entity in any form that owns and operates a small business.

History. Acts 2001, No. 913, § 2; 2005, No. 892, § 1.

A.C.R.C. Notes. Acts 2001, No. 913, § 1, provided: "Nothing in this act shall be construed to terminate or in any way interfere with the continuing operations

of the program established under Act 448 of 1999 before the effective date of this act."

Amendments. The 2005 amendment deleted "not for profit or governmental" following "means any" in (2).

15-4-2502. Fifty-percent loan subsidy program.

(a) The Arkansas Economic Development Commission shall institute a program to make participation loans that are originated by approved community lenders for small businesses in this state.

(b) The commission's participating share of any qualified loan shall not exceed fifty percent (50%) of the total loan amount, and the department's share shall be in an amount not less than two thousand five hundred dollars (\$2,500) and not more than forty thousand dollars (\$40,000).

(c) The commission shall share on a *pari passu* basis with the originating community lender all collateral, guarantees, repayments, and recoveries on loans made in this program.

(d) The commission shall give preference to high-unemployment counties.

History. Acts 2001, No. 913, § 3.

A.C.R.C. Notes. Acts 2001, No. 913, § 1, provided: "Nothing in this act shall be construed to terminate or in any way

interfere with the continuing operations of the program established under Act 448 of 1999 before the effective date of this act."

15-4-2503. Lender application — Approval.

(a) Any community lender that desires to seek participating loans from the Arkansas Economic Development Commission pursuant to the program authorized by this subchapter shall make application to the commission.

(b) Approval of any participating community lender shall be done by action of the Arkansas Economic Development Council.

History. Acts 2001, No. 913, § 4.

A.C.R.C. Notes. Acts 2001, No. 913, § 1, provided: "Nothing in this act shall be construed to terminate or in any way

interfere with the continuing operations of the program established under Act 448 of 1999 before the effective date of this act."

15-4-2504. Supporting documents.

Each community lender requesting a participating loan shall submit to the Arkansas Economic Development Commission an application, supporting documents, and instruments as may be required by the regulations promulgated by the department.

History. Acts 2001, No. 913, § 5.

A.C.R.C. Notes. Acts 2001, No. 913, § 1, provided: "Nothing in this act shall be construed to terminate or in any way

interfere with the continuing operations of the program established under Act 448 of 1999 before the effective date of this act."

15-4-2505. Duty to seek collaboration.

The Arkansas Economic Development Commission shall:

(1) Actively seek support from and collaboration with statewide financial institutions, the Arkansas Credit Union League, Small Business Administration, Arkansas Bankers Association, Arkansas Development Finance Authority, and other agencies interested in supporting small business efforts in the state; and

(2) Provide small business persons with:

(A) Assistance and resources for preparation of business plans available through the department and other agencies;

(B) Information about services available through the department;

(C) Information about financial institutions and agencies that have agreed to support and collaborate with the program authorized by this subchapter;

(D) Continuing assistance after a loan is made; and

(E) Information on training programs or technical assistance to include instructions on the importance of establishing and maintaining credit, seeking and obtaining state licenses and contracts, and business planning and management.

History. Acts 2001, No. 913, § 6.

A.C.R.C. Notes. Acts 2001, No. 913, § 1, provided: "Nothing in this act shall be construed to terminate or in any way

interfere with the continuing operations of the program established under Act 448 of 1999 before the effective date of this act."

15-4-2506. Regulations.

The Arkansas Economic Development Commission shall promulgate regulations to implement this subchapter.

History. Acts 2001, No. 913, § 7.

A.C.R.C. Notes. Acts 2001, No. 913, § 1, provided: "Nothing in this act shall be construed to terminate or in any way

interfere with the continuing operations of the program established under Act 448 of 1999 before the effective date of this act."

SUBCHAPTER 26 — ARKANSAS DELTA DEVELOPMENT COMMISSION

SECTION.

15-4-2601 — 15-4-2608. [Repealed.]

15-4-2601 — 15-4-2608. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2009, No. 1484, § 4. The subchapter was derived from the following sources:

15-4-2601. Acts 2001, No. 1601, § 1.

15-4-2602. Acts 2001, No. 1601, §§ 2, 3.

15-4-2603. Acts 2001, No. 1601, § 4.

15-4-2604. Acts 2001, No. 1601, § 5.

15-4-2605. Acts 2001, No. 1601, § 6.

15-4-2606. Acts 2001, No. 1601, § 7.

15-4-2607. Acts 2001, No. 1601, § 8.

15-4-2608. Acts 2001, No. 1601, § 9.

SUBCHAPTER 27 — CONSOLIDATED INCENTIVE ACT OF 2003

SECTION.

15-4-2701. Legislative intent.

15-4-2702. Title.

15-4-2703. Definitions.

15-4-2704. Tier system.

15-4-2705. Job-creation tax credit.

15-4-2706. Investment tax incentives.

15-4-2707. Economic Development Incentive Fund — Payroll rebate.

15-4-2708. Research and development tax credits.

SECTION.

15-4-2709. Targeted business special incentive.

15-4-2710. Powers and duties of the Arkansas Economic Development Commission.

15-4-2711. Administration.

15-4-2712. Restrictions.

15-4-2713. [Repealed.]

15-4-2714. Coordination with other economic development programs.

Effective Dates. Acts 2003, No. 182, § 2: Mar. 3, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this act on July 1, 2003, is essential to the economic incentives of the Department of Economic Development provided in this act, and that in the event of an extension of the regular session, the delay in the effective date of this act beyond July 1, 2003, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the pres-

ervation of the public peace, health and safety shall become effective on March 3, 2003."

Acts 2005, No. 1296, § 11: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly that this act is designed to bring new jobs to this state; that current financial conditions dictate that unless industries can take advantage of the provisions of this act they may be forced to locate in another state; that unless this bill takes effect on the prescribed date significant numbers of jobs will be lost to this state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005."

15-4-2701. Legislative intent.

(a) The General Assembly recognizes that job creation and capital investment in Arkansas are dependent upon being competitive with other states for business locations and expansions.

(b) Acts 2001, No. 757, authorized the Bureau of Legislative Research to conduct a study of business development incentives in Arkansas and in states with which Arkansas frequently competes for business locations.

(c) This subchapter incorporates many of the findings of that study in an effort to make our state more competitive for the creation of new and better jobs for the citizens of Arkansas.

History. Acts 2003, No. 182, § 1.

15-4-2702. Title.

This subchapter shall be known and may be cited as the “Consolidated Incentive Act of 2003”.

History. Acts 2003, No. 182, § 1.

15-4-2703. Definitions.

As used in this subchapter:

(1) “Applied research” means any activity that seeks to utilize, synthesize, or apply existing knowledge, information, or resources to the resolution of a specific problem, question, or issue;

(2)(A) “Average hourly wage” means the amount obtained when payroll, as defined in this section, is divided by the number of hours worked to earn the payroll.

(B) For the purpose of subdivision (2)(A) of this section, forty (40) hours per week shall be used as the number of hours worked for a salaried employee;

(3) “Basic research” means any original investigation for the advancement of scientific or technological knowledge;

(4) “Commission” means the Arkansas Economic Development Commission;

(5) “Contractual employee” means an employee who:

(A) May be included in the payroll calculations of a business qualifying for benefits under this subchapter and is under the direct supervision of the business receiving benefits under this subchapter, but is an employee of a business other than the one receiving benefits under this subchapter;

(B) Otherwise meets the requirements of a new full-time permanent employee of the business receiving benefits under this subchapter; and

(C) Receives a benefits package comparable to direct employees of the business receiving benefits under this subchapter;

(6)(A) “Corporate headquarters” means the facility or portion of a facility where corporate staff employees are physically employed and where the majority of the company’s financial, personnel, legal, planning, information technology, or other headquarters-related functions are handled either on a regional basis or a national basis.

(B) A corporate headquarters must be a regional corporate headquarters or a national corporate headquarters;

(7)(A) “County or state average hourly wage” means the weighted average weekly earnings for Arkansans in all industries, both statewide and countywide, as calculated by the Department of Workforce Services in its most recent “Annual Covered Employment and Earnings” publication, divided by forty (40).

(B) The average hourly wage threshold determined at the signing date of the financial incentive agreement shall be the threshold for the term of the agreement;

(8) "Director" means the Director of the Arkansas Economic Development Commission;

(9) "Distribution center" means a facility for the reception, storage, and shipping of:

(A) A business's own products or products that the business wholesales to retail businesses or ships to its own retail outlets if seventy-five percent (75%) of the sales revenues are from out-of-state customers;

(B) Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenues of the product owner are from out-of-state customers; or

(C) Products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;

(10) "Eligible businesses" means nonretail businesses engaged in commerce for profit that meet the eligibility requirements for the applicable incentive offered by this subchapter and fall into one (1) or more of the following categories:

(A) Manufacturers classified in sectors 31-33 in the North American Industry Classification System, as in effect January 1, 2003;

(B)(i) Businesses primarily engaged in the design and development of prepackaged software, digital content production and preservation, computer processing and data preparation services, or information retrieval services.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state;

(C)(i) Businesses primarily engaged in motion picture productions.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state;

(D) Distribution centers or intermodal facilities;

(E) Office sector businesses;

(F) National or regional corporate headquarters, North American Industry Classification System Code 551114, as in effect January 1, 2005;

(G) Firms primarily engaged in commercial, physical, and biological research as classified in the North American Industry Classification System Code 541710, as in effect January 1, 2005;

(H)(i) Scientific and technical services businesses.

(ii)(a) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state.

(b)(1) The average hourly wages paid by businesses in this group shall exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.

(2) The average hourly wage threshold determined at the signing date of the financial incentive agreement shall be the threshold for the term of the agreement; and

(I) The director may classify a nonretail business as an eligible business if the following conditions exist:

(i) The business receives at least seventy-five percent (75%) of its sales revenue from out of state; and

(ii) The business proposes to pay wages in excess of one hundred ten percent (110%) of the county or state average hourly wage, whichever is less;

(11) "Equity investment" means capital invested in common or preferred stock, royalty or intellectual property rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private businesses, including a federal agency's award of a Small Business Innovative Research grant or a Small Business Technology Transfer grant;

(12)(A) "Existing employees" means those employees hired by the business before the date the financial incentive agreement was signed.

(B) Existing employees may be considered new full-time permanent employees only if:

(i) The position or job filled by the existing employee was created in accordance with the signed financial incentive agreement; and

(ii) The position vacated by the existing employee was either filled by a subsequent employee or no subsequent employee will be hired because the business no longer conducts the particular business activity requiring that classification.

(C) If the Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration find that a significant impairment of Arkansas job opportunities for existing employees will otherwise occur, they may jointly authorize the counting of existing employees as new full-time permanent employees;

(13) "Facility" means a single physical location at which the eligible business is conducting its operations;

(14) "Financial incentive agreement" means an agreement entered into by an eligible business and the commission to provide the business an incentive to locate a new business or to expand an existing business in Arkansas;

(15) "Fund" means the Economic Development Incentive Fund;

(16) "Governing authority" means the quorum court of a county or the governing body of a municipality;

(17)(A)(i) "In-house research" means applied research supported by the business through the purchase of supplies for research activities and payment of wages and usual fringe benefits for employees of the business who conduct research activities in research facilities:

(a) Dedicated to the conduct of research activities;

(b) Operated by the business; and

(c) Performed primarily under laboratory, clinical, or field experimental conditions for the purpose of reducing a concept or idea to practice or to advance a concept or idea or improvement thereon to the point of practical application.

(ii) "In-house research" includes:

(a) Experimental or laboratory activity to develop new products, improve existing products, or develop new uses of products, but only to the extent that activity is conducted in Arkansas; and

(b) A contractual agreement with a state college, state university, or other research organization to perform research for a targeted business if the President of the Arkansas Science and Technology Authority makes a written determination before the research is performed that the research is essential to the core function of the targeted business.

(B) "In-house research" does not include tests or inspections of materials or products for quality control, efficiency surveys, management studies, other market research, or any other ordinary and necessary expenses of conducting business;

(18) "Intellectual property" means an invention, discovery, or new idea that the legal entity responsible for commercialization has decided to legally protect for possible commercial gain, based on the disclosure of the creator;

(19) "Intermodal facility" means a facility with more than one (1) mode of interconnected movement of freight, commerce, or passengers;

(20) "Investment threshold" means the minimum amount of investment in project costs that must be incurred in order to qualify for eligibility;

(21) "Invests" or "investment" means money expended by or on behalf of an approved eligible business that seeks to begin or expand operations in Arkansas, and without this infusion of capital, the location or expansion may not take place;

(22) "Lease" means a right to possession of real property for a specific term in return for consideration, as determined in a lease agreement by both parties;

(23)(A) "Modernization" means an increase in efficiency or productivity of a business through investment in machinery or equipment, or both.

(B) "Modernization" does not include costs for routine maintenance or the installation of equipment that does not improve efficiency or productivity, except for expenditures for pollution control equipment mandated by state or federal laws or regulations;

(24) "National corporate headquarters" means the sole corporate headquarters in the nation that handles headquarters-related functions on a national basis;

(25)(A)(i) "New full-time permanent employee" means a position or job that was created pursuant to the signed financial incentive agreement and that is filled by one (1) or more employees or contractual employees who:

(a) Were Arkansas taxpayers during the year in which the tax credits or incentives were earned;

(b) Work at the facility identified in the financial incentive agreement; and

(c) Are not existing employees, except as allowed under subdivision (12) of this section.

(ii) The position or job held by the employee or employees shall have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week.

(B) However, to qualify under this subchapter, a contractual employee shall be offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter;

(26) "Nonretail business" means a business that derives less than ten percent (10%) of its total Arkansas revenue from sales to the general public;

(27)(A) "Office sector business" means business operations that support primary business needs, including, but not limited to, customer service, credit accounting, telemarketing, claims processing, and other administrative functions.

(B) All businesses in this group must be nonretail businesses and derive at least seventy-five percent (75%) of their sales revenue from out of state;

(28) "Payroll" means the total taxable wages, including overtime and bonuses, paid during the preceding tax year of the eligible business to new full-time permanent employees hired after the date of the signed financial incentive agreement;

(29)(A) "Person" means an individual, trust, estate, fiduciary, firm, partnership, limited liability company, or corporation.

(B) "Person" includes:

(i) The directors, officers, agents, and employees of any person;

(ii) Beneficiaries, members, managers, and partners; and

(iii) Any county or municipal subdivision of the state;

(30) "Preconstruction costs" means the cost of eligible items incurred before the start of construction, including:

(A) Project planning costs;

(B) Architectural and engineering fees;

(C) Right-of-way purchases;

(D) Utility extensions;

(E) Site preparations;

(F) Purchase of mineral rights;

(G) Building demolition;

(H) Builders risk insurance;

(I) Capitalized start-up costs;

(J) Deposits and process payments on eligible machinery and equipment; and

(K) Other costs necessary to prepare for the start of construction;

(31)(A) "Project" means costs associated with the:

(i) Construction of a new plant or facility including, but not limited to, land, building, production equipment, or support infrastructure;

(ii) Expansion of an established plant or facility by adding to the building, production equipment, or support infrastructure; or

(iii) Modernization of an established plant or facility through the replacement of production or processing equipment or support infrastructure that improves efficiency or productivity.

(B) "Project" does not include:

(i) Expenditures for routine repair and maintenance that do not result in new construction or expansion;

(ii) Routine operating expenditures;

(iii) Expenditures incurred at multiple facilities; or

(iv) The purchase or acquisition of an existing business unless:

(a) There is sufficient documentation that the existing business was closed; and

(b) The purchase of the existing business will result in the retention of the jobs that would have been lost due to the closure.

(C) Eligible project costs must be incurred within four (4) years from the date a financial incentive agreement was signed by the commission;

(32) "Project plan" means a plan:

(A) Submitted to the commission containing such information as may be required by the director to determine eligibility for benefits; and

(B) That if approved is a supplement to the financial incentive agreement;

(33) "Qualified business" means an eligible business that:

(A) Has met the qualifications for one (1) or more economic development incentives authorized by this subchapter; and

(B) Has signed a financial incentive agreement with the commission or is involved in a research and development program administered by the Arkansas Science and Technology Authority;

(34) "Qualified research expenditures" means the sum of any amounts that are paid or incurred by an Arkansas taxpayer during the taxable year in funding a qualified research program that has been approved for tax credit treatment under rules and regulations promulgated by the commission;

(35) "Region" or "regional" means a geographic area comprising two (2) or more states, including this state;

(36)(A) "Regional corporate headquarters" means the location where a headquarters staff performs functions on a regional basis that involve the services of administration, planning, research and development, marketing, personnel, legal, computer, or telecommunications.

(B)(i) As used in subdivision (36)(A) of this section, "regional" means a geographic area composed of this state and a contiguous state.

(ii) However, a function on a regional basis does not include a function involving manufacturing, processing, warehousing, distributing, or wholesaling activities or the operation of a call center;

(37) "Research and development programs of the Arkansas Science and Technology Authority" means statutory programs operated by the Arkansas Science and Technology Authority under § 15-3-101 et seq.;

(38) "Research area of strategic value" means research in fields having long-term economic or commercial value to the state and that have been identified in the research and development plan approved from time to time by the Board of Directors of the Arkansas Science and Technology Authority;

(39) "Scientific and technical services business" means a business:

(A) Primarily engaged in performing scientific and technical activities for others, including:

(i) Architectural and engineering design;

(ii) Computer programming and computer systems design; and

(iii) Scientific research and development in the physical, biological, and engineering sciences;

(B) Selling expertise;

(C) Having production processes that are almost wholly dependent on worker skills;

(D) Deriving at least seventy-five percent (75%) of its sales revenue from out of state; and

(E) Paying average hourly wages that exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less;

(40) "Start of construction" means any activity that causes a physical change to the building or property, or both, identified as the site of the approved project, but excluding engineering surveys, soil tests, land clearing, and extension of roads and utilities to the project site;

(41) "Strategic research" means research that has strategic economic or long-term commercial value to the state and that is identified in the research and development plan approved from time to time by the Board of Directors of the Arkansas Science and Technology Authority;

(42) "Support infrastructure" means physical assets necessary for the business to operate including, but not limited to, water systems, wastewater systems, gas and electric utilities, roads, bridges, parking lots, and communication infrastructure;

(43)(A) "Targeted businesses" means a grouping of growing business sectors, not to exceed six (6), that include the following:

(i) Advanced materials and manufacturing systems;

(ii) Agriculture, food, and environmental sciences;

(iii) Biotechnology, bioengineering, and life sciences;

(iv) Information technology;

(v) Transportation logistics; and

(vi) Bio-based products.

(B) In order to receive benefits as a targeted business, the business must:

(i) Have been operating in the state for less than five (5) years;

(ii) Pay not less than one hundred fifty percent (150%) of the lesser of the county or state average hourly wage; and

(iii) Have been selected to receive special benefits; and

(44) "Tiers" means the ranking of the seventy-five (75) counties of Arkansas into four (4) divisions that delineate the economic prosperity of the counties and allow for different levels of benefits.

History. Acts 2003, No. 182, § 1; 2005, No. 1296, § 1; 2007, No. 1596, § 1; 2009, No. 716, §§ 3–5.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provides:

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

Publisher's Notes. Acts 2005, No. 1296, § 14, provided: “Effective Date. The benefits afforded by this act shall only apply to the qualified businesses approved by the Department of Economic Development with a signed financial incentive agreement dated on or after July 1, 2005.”

Acts 2007, No. 1596, § 6, provided: “The provisions of this act shall not be effective until the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of this act.”

Amendments. The 2005 amendment inserted “divided by the number of new full-time permanent employees” in (2); added (6); substituted “and shipping” for “or shipping” in (9); substituted “sales revenue from out of state” for “revenue from out-of-state sales” in (10)(B)(ii), (10)(C)(ii), (10)(H)(i)(a) and present (27)(B) and (39)(D); inserted “or intermodal facilities” in (10)(D); added “North American Industry ... January 11, 2005” in (10)(F); substituted “Code 541710, as in effect January 1, 2005” for “as in effect January 1, 2003; and” in (10)(G); substituted “sales revenue from out of state” for “revenue from out-of-state sales” in (10)(H)(ii)(a); added (10)(H)(ii)(b)(2); deleted former (25); inserted (10)(I) and present (13), (19)–(22), (30) and (31) and redesignated the remaining subdivisions accordingly; added present (25)(A)(i)(a)–(c); deleted former (25); and substituted “building, property” for “building or property” in present (40).

The 2007 amendment added “if seventy-five percent (75%) of the sales revenues are from out-of-state customers” in (9)(A); inserted “hourly” in (10)(I)(ii) and (43)(B)(ii); added (12)(C); and made related changes.

The 2009 amendment, in (17)(A)(ii), inserted (17)(A)(ii)(b), redesignated the remaining text accordingly, and made related changes; and rewrote (36).

15-4-2704. Tier system.

(a) The Arkansas Economic Development Commission shall establish a tier system that shall rank all seventy-five (75) counties of this state into four (4) divisions on the basis of economic prosperity.

(b) Tier 4 will be the least prosperous division and tier 1 will be the most prosperous division.

(c) The assignment of a county to a tier shall be based on a ranking of:

(1) Unemployment rate;

- (2) Poverty rate;
- (3) Per capita income; and
- (4) Population growth.
- (d) The commission shall:
 - (1) Update ranking statistics annually; and
 - (2) Place counties into tiers based on the updated statistics.

(e)(1) A county that has experienced a sudden and severe period of economic distress caused by the closing of a business entity that results in the loss of a minimum of five percent (5%) of the employed labor force, as determined by the most recent Labor Market Information publication published by the Department of Workforce Services, may be moved up one (1) tier upon submitting a request to and being approved by the Arkansas Economic Development Council.

(2) If the council approves a county's move to a higher tier, any qualified business having signed a financial incentive agreement with the commission dated before the council's action shall receive the benefits for the duration of the term of the agreement that were assigned to the county to which it located at the time the financial incentive agreement was signed by the commission regardless of any subsequent change to the tier in which the county is assigned.

History. Acts 2003, No. 182, § 1; 2005, No. 1296, § 2.

Publisher's Notes. Acts 2005, No. 1296, § 14, provided: "Effective Date. The benefits afforded by this act shall only apply to the qualified businesses approved

by the Department of Economic Development with a signed financial incentive agreement dated on or after July 1, 2005."

Amendments. The 2005 amendment deleted former (e); and redesignated former (f) as present (e).

15-4-2705. Job-creation tax credit.

- (a) There is established a job-creation tax credit to encourage:
 - (1) The creation of new jobs; and
 - (2) Business growth and expansion.
- (b) An application for the income tax credit under this section shall be submitted to the Arkansas Economic Development Commission.
- (c) To qualify for this credit, an eligible business shall have an annual payroll for new full-time permanent employees in excess of the payroll threshold for the county tier in which the project is located, as follows:
 - (1) For tier 1 counties, the annual payroll threshold is one hundred twenty-five thousand dollars (\$125,000);
 - (2) For tier 2 counties, the annual payroll threshold is one hundred thousand dollars (\$100,000);
 - (3) For tier 3 counties, the annual payroll threshold is seventy-five thousand dollars (\$75,000); and
 - (4) For tier 4 counties, the annual payroll threshold is fifty thousand dollars (\$50,000).
- (d)(1) The credit earned under this section is a percentage of the payroll of the new full-time permanent employees hired following the date of the approved financial incentive agreement.

(2) The percentage shall be determined by the county tier in which the project is located, as follows:

(A) For tier 1 counties, the credit is one percent (1%) of the payroll for the new full-time permanent employees of the business;

(B) For tier 2 counties, the credit is two percent (2%) of the payroll for the new full-time permanent employees of the business;

(C) For tier 3 counties, the credit is three percent (3%) of the payroll for the new full-time permanent employees of the business; and

(D) For tier 4 counties, the credit is four percent (4%) of the payroll for the new full-time permanent employees of the business.

(3) To qualify for a credit under this subsection, the proposed average hourly wage of a company applying for the benefit shall equal or be greater than the lowest county average hourly wage as calculated by the commission based on the most recent calendar year data published by the Department of Workforce Services.

(e) The term of the financial incentive agreement shall be for a period of sixty (60) months, beginning on the date of the approved financial incentive agreement.

(f)(1) After receiving an approved financial incentive agreement from the Arkansas Economic Development Commission, the qualified business shall certify to the Revenue Division of the Department of Finance and Administration the payroll of the new full-time permanent employees annually at the end of each tax year during the term of the agreement.

(2) Upon verification of the reported payroll amounts, the Revenue Division shall authorize the appropriate income tax credit.

(g)(1) The tax credits earned under this section may offset fifty percent (50%) of the business's tax liability in any one (1) year.

(2) Any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned or until exhausted, whichever event occurs first.

(h)(1) If a business fails to meet the payroll threshold within two (2) years after the signing of the financial incentive agreement or within the time period established by an extension approved by the Director of the Department of Finance and Administration and the Director of the Arkansas Economic Development Commission, that business will be liable for repayment of all benefits previously received by the business.

(2) After a business has failed to reach the payroll threshold of this section in a timely manner, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

History. Acts 2003, No. 182, § 1; 2005, No. 1296, § 3; 2009, No. 716, § 6.

Publisher's Notes. Acts 2005, No. 1296, § 14, provided: "Effective Date. The benefits afforded by this act shall only

apply to the qualified businesses approved by the Department of Economic Development with a signed financial incentive agreement dated on or after July 1, 2005."

Amendments. The 2005 amendment

rewrote (b); inserted present (c)-(g); and redesignated former (c) as present (h).
The 2009 amendment inserted (d)(3).

15-4-2706. Investment tax incentives.

(a) There are established investment tax incentives to:

(1) Encourage capital investment for the long-term viability of businesses in the state; and

(2) Create new jobs.

(b)(1) The award of this incentive shall be at the discretion of the Director of the Arkansas Economic Development Commission.

(2) If offered, an application for an income tax credit under this section shall be submitted to the commission.

(3) Eligibility for this incentive is dependent upon the tier in which the project is located, as follows:

(A) For tier 1 counties, the business shall invest five million dollars (\$5,000,000) or more and have an annual payroll for new full-time permanent employees in excess of two million dollars (\$2,000,000);

(B) For tier 2 counties, the business shall invest three million seven hundred fifty thousand dollars (\$3,750,000) or more and have an annual payroll for new full-time permanent employees in excess of one million five hundred thousand dollars (\$1,500,000);

(C) For tier 3 counties, the business shall invest three million dollars (\$3,000,000) or more and have an annual payroll for new full-time permanent employees in excess of one million two hundred thousand dollars (\$1,200,000); or

(D) For tier 4 counties, the business shall invest two million dollars (\$2,000,000) or more and have an annual payroll for new full-time permanent employees in excess of eight hundred thousand dollars (\$800,000).

(4) Upon approval by the commission, the director shall transmit an approved financial incentive agreement to the approved company and the Revenue Division of the Department of Finance and Administration.

(5) The qualified business shall reach the investment threshold within four (4) years from the date of the signing of the financial incentive agreement, except for lease payments authorized by subdivision (b)(6)(D) of this section or subdivision (c)(6) of this section.

(6)(A)(i) After receiving an approved financial incentive agreement from the commission, the approved company shall certify eligible project costs annually at the end of each calendar year for the term of the agreement to the Revenue Division.

(ii) Upon verification of eligible project costs, the Revenue Division shall authorize an income tax credit of ten percent (10%) based on the total investment in land, buildings, equipment, and costs related to licensing and protecting intellectual property.

(B) The amount of income tax credit taken during any tax year shall not exceed fifty percent (50%) of the business's income tax liability resulting from the project or facility.

(C) Unused tax credits may be carried forward for up to nine (9) years after the year in which the credit was first earned.

(D) A qualified business that enters into a lease for a building or equipment for a period in excess of five (5) years may count the lease payments for five (5) years as a qualifying expenditure for the investment threshold required for this investment incentive.

(7) Technology-based enterprises, as defined by § 14-164-203(12), may earn, at the discretion of the Director of the Arkansas Economic Development Commission, an income tax credit or sales and use tax credit based on new investment, provided that the technology-based enterprise:

(A) Creates a new payroll of at least two hundred fifty thousand dollars (\$250,000); and

(B) Pays wages that are at least one hundred seventy-five percent (175%) of the state or county average hourly wage, whichever is less.

(8)(A) The income tax credit or sales and use tax credit that may be earned by a technology-based enterprise shall be based on the level of investment as follows:

(i) The income tax credit or sales and use tax credit will be equal to two percent (2%) of the investment for an investment that is between two hundred fifty thousand dollars (\$250,000) and five hundred thousand dollars (\$500,000);

(ii) The income tax credit or sales and use tax credit will be equal to four percent (4%) of the investment for that part of the investment that is over five hundred thousand dollars (\$500,000) and less than one million dollars (\$1,000,000);

(iii) The income tax credit or sales and use tax credit will be equal to six percent (6%) of the investment for that part of the investment that is over one million dollars (\$1,000,000) and less than two million dollars (\$2,000,000); and

(iv) The income tax credit or sales and use tax credit will be equal to eight percent (8%) of the investment for that part of the investment that is over two million dollars (\$2,000,000).

(B) The percentage of the investment used to determine the amount of credit earned shall be established based upon the project cost estimate at the time of signing the financial incentive agreement.

(9) All investments by a technology-based enterprise must be made within four (4) years of the date of the signed financial incentive agreement.

(10) Prior to execution of the financial incentive agreement, the approved company shall elect to receive the tax credits as either:

(A) A sales and use tax credit; or

(B) An income tax credit.

(11)(A) The income tax credit or sales and use tax credit earned by a technology-based enterprise may offset income tax liabilities or sales and use tax liabilities as follows:

(i) A technology-based enterprise that pays at least one hundred seventy-five percent (175%) of the state or county average hourly

wage, whichever is less, may offset fifty percent (50%) of its income tax liability or sales and use tax liability;

(ii) A technology-based enterprise that pays at least two hundred percent (200%) of the state or county average hourly wage, whichever is less, may offset seventy-five percent (75%) of its income tax liability or sales and use tax liability; and

(iii) A technology-based enterprise that pays at least two hundred twenty-five percent (225%) of the state or county average hourly wage, whichever is less, may offset one hundred percent (100%) of its income tax liability or sales and use tax liability.

(B) The average hourly wage proposed to be paid by the approved company as provided in the signed financial incentive agreement shall be the average hourly wage to determine the percentage of credit that may be used against the approved company's tax liability for the term of the financial incentive agreement.

(12) After receiving an approved financial incentive agreement from the commission, the approved company shall certify eligible project costs annually at the end of each tax year for the term of the financial incentive agreement to the Revenue Division of the Department of Finance and Administration.

(13) Unused income tax credits or sales and use tax credits may be carried forward for a period not to exceed nine (9) years after the year in which the credit was first earned.

(c)(1)(A) An application for a retention tax credit under this subsection shall be submitted to the commission.

(B)(i) The application shall be submitted to the commission before incurring any project costs.

(ii) With the exception of preconstruction costs, only those costs incurred after the commission's approval are eligible for the tax credit.

(2) The tax credit against the qualified business' sales and use tax liability is available only to Arkansas businesses that:

(A) Have been in continuous operation in the state for at least two (2) years;

(B) Invest a minimum of five million dollars (\$5,000,000) in a project, including land, buildings, and equipment used in the construction, expansion, or modernization; and

(C) Hold a direct-pay sales and use tax permit from the Revenue Division before submitting an application for benefits.

(3)(A) If allowed, the credit shall be a percentage of the eligible project costs.

(B) The amount of the credit shall be one-half percent (0.5%) above the state sales and use tax rate in effect at the time a financial incentive agreement is signed with the commission.

(C) In any one (1) year following the year of the expenditures, credits taken cannot exceed fifty percent (50%) of the direct pay sales and use tax liability of the business for taxable purchases.

(D) Unused credits may be carried forward for a period of up to five (5) years beyond the year in which the credit was first earned.

(4)(A) Upon determination by the Director of the Arkansas Economic Development Commission that the project qualifies for credit under this subsection, the Director of the Arkansas Economic Development Commission shall certify to the Director of the Department of Finance and Administration that the project qualifies and shall transmit with his or her certification the documents or copies of the documents upon which the certification was based.

(B) The Director of the Department of Finance and Administration shall provide forms to the qualified business on which to claim the credit.

(C) At the end of the calendar year in which the application is made and at the end of each calendar year thereafter until the project is completed, the qualified business shall certify on the form provided by the Director of the Department of Finance and Administration the amount of expenditures on the project during the preceding calendar year.

(D) Upon receipt of the form certifying expenditures, the Director of the Department of Finance and Administration shall determine the amount due as a credit for the preceding calendar year and issue a memorandum of credit to the qualified business.

(E) The credit against the qualified business' sales and use tax liability shall be a percentage of the eligible project costs equal to one-half percent (0.5%) above the state sales and use tax rate in effect at the time the financial incentive agreement was signed by the commission.

(5) If a business plans to apply for benefits under this subsection and also plans to apply for benefits under § 15-4-2705, the financial incentive agreement under § 15-4-2705 must be signed within twenty-four (24) months after signing the financial incentive agreement under this subsection.

(6) A qualified business that enters into a lease for a building or equipment for a period in excess of five (5) years may count the lease payments for five (5) years as a qualifying expenditure for the investment threshold required for this investment incentive.

(d)(1)(A) An application for a state and local sales and use tax refund for a new and expanding eligible business shall be filed with the commission contingent upon the approval of an endorsement resolution from the governing authority of a municipality or county, or both, in whose jurisdiction the business will be located.

(B) The resolution shall:

(i) Endorse the applicant's participation in this sales and use tax refund program; and

(ii)(a) Specify that the Department of Finance and Administration is authorized to refund local sales taxes to the qualified business.

(b) A municipality or county, or both, may authorize the refund of any sales or use tax levied by the municipality or county but may not authorize the refund of any sales or use tax not levied by the municipality or county in which the qualified business is located.

(C) Any eligible business that applies for a sales and use tax refund under this subsection shall invest in excess of one hundred thousand dollars (\$100,000) in order to qualify for the sales and use tax refund.

(2)(A)(i) A sales and use tax refund of state and local sales and use taxes, excepting the sales and use taxes dedicated to the Educational Adequacy Fund created in § 19-5-1227 and the Conservation Tax Fund as authorized by § 19-6-484, on the purchases of the material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any new or expanding qualified business and machinery and equipment to be located in or in connection with such a building shall be authorized by the Director of the Department of Finance and Administration.

(ii) The local sales and use tax may be refunded only from the municipality or county, or both, in which the qualified business is located.

(B) A refund shall not be authorized for:

(i) Routine operating expenditures; or

(ii) The purchase of replacements of items previously purchased as part of a project under this subsection unless the items previously purchased are necessary for the implementation or completion of the project.

(3) Subject to the approval of the commission, a program participant may make changes in a project by written amendment to the project plan filed with the commission.

(4) All claims for sales and use tax refunds under this subsection shall be denied unless they are filed with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.

(5)(A)(i) In order to be eligible for the benefits under this subsection, a business shall sign a job creation financial incentive agreement under § 15-4-2705 or § 15-4-2707 and comply with the eligibility requirements of the incentive agreement.

(ii) However, a business may apply for benefits under this subsection if:

(a) The business has an existing agreement under subdivision (d)(5)(A) of this section and the provisions of subdivision (d)(5)(B) of this section have been met within the previous forty-eight (48) months; or

(b) The business has signed a job creation financial incentive agreement under § 15-4-2705 or § 15-4-2707 within the previous forty-eight (48) months.

(B) The financial incentive agreement under § 15-4-2705 or § 15-4-2707 shall be signed within twenty-four (24) months after signing the financial incentive agreement under this subsection.

(e)(1) A new targeted business shall be eligible for a refund of state and local sales and use taxes for qualified expenditures identified in the project plan if:

(A) The annual payroll of the business for Arkansas taxpayers is greater than one hundred thousand dollars (\$100,000); and

(B) The business shows proof of an equity investment of at least two hundred fifty thousand dollars (\$250,000).

(2)(A) An application for the targeted business state and local sales and use tax refund program for a new targeted business shall be filed with the commission contingent upon the approval of an endorsement resolution from the governing authority of a municipality or county, or both, in whose jurisdiction the business will be located.

(B) The resolution shall:

(i) Endorse the applicant's participation in this sales and use tax refund program; and

(ii)(a) Specify that the Department of Finance and Administration is authorized to refund local sales and use taxes to the targeted business.

(b) A municipality or county, or both, can authorize the refund of any sales tax levied by the municipality or county but cannot authorize the refund of any sales or use tax not levied by the municipality or county in which the targeted business is located.

(3) After the Director of the Arkansas Economic Development Commission has determined that the project is eligible for the sales and use tax refund, this determination accompanied by the financial incentive agreement and any other pertinent documentation shall be forwarded to the Director of the Department of Finance and Administration.

(4)(A)(i) A sales and use tax refund of state and local sales and use taxes, excepting the sales and use taxes dedicated to the Educational Adequacy Fund as authorized by § 26-57-1002(d)(1)(A)(ii)(a) and the Conservation Tax Fund as authorized by § 19-6-484, on the purchases of the material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any new or expanding qualified business and machinery and equipment to be located in or in connection with such a building shall be authorized by the Director of the Department of Finance and Administration.

(ii) The local sales and use tax may be refunded only from the municipality or county, or both, in which the qualified business is located.

(B) A refund shall not be authorized for:

(i) Routine operating expenditures; or

(ii) The purchase of replacement items under this subsection unless the items are necessary for the implementation or completion of the project.

(5) Subject to the approval of the commission, a program participant may make changes in a project by written amendment to the project plan filed with the Arkansas Economic Development Commission.

(6) All claims for sales and use tax refunds under this subsection shall be denied unless they are filed with the Revenue Division of the Department of Finance and Administration within three (3) years after the date of the qualified purchase or purchases.

(7) If a targeted business plans to apply for benefits under this subsection and also plans to apply for benefits under § 15-4-2709, the financial incentive agreement under § 15-4-2709 must be signed within twenty-four (24) months of signing the financial incentive agreement under this subsection and comply with the eligibility requirements of the agreements.

History. Acts 2003, No. 182, § 1; 2005, No. 1296, § 4; 2007, No. 1596, § 2; 2009, No. 716, §§ 7, 8.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

“Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

Publisher’s Notes. Acts 2005, No. 1296, § 14, provided: “Effective Date. The benefits afforded by this act shall only apply to the qualified businesses approved by the Department of Economic Development with a signed financial incentive agreement dated on or after July 1, 2005.”

Acts 2007, No. 1596, § 6, provided: “The provisions of this act shall not be effective until the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of this act.”

Amendments. The 2005 amendment rewrote this section.

The 2007 amendment added (b)(7) — (13).

The 2009 amendment, in (d)(5)(A), inserted (d)(5)(A)(ii), redesignated the remaining subdivision accordingly, deleted “or subsection (b) of this section” following “15-4-2707” in (d)(5)(A)(i) and (d)(5)(B), and made related changes; and substituted “two hundred fifty thousand dollars (\$250,000)” for “four hundred thousand dollars (\$400,000)” in (e)(1)(B).

15-4-2707. Economic Development Incentive Fund — Payroll rebate.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the Economic Development Incentive Fund of the Arkansas Economic Development Commission.

(b) The fund shall consist of revenues designated for this fund by the Revenue Division of the Department of Finance and Administration pursuant to agreements entered into by the commission with eligible businesses.

(c) After the department has received the certification of the payrolls of the businesses that have entered into financial incentive agreements with the commission for the payroll rebate authorized by this section, the department shall transfer the appropriate amount of money designated by the financial incentive agreements out of general revenues into a special account designated as special revenue for the fund.

(d)(1) The award of this incentive is at the discretion of the Director of the Arkansas Economic Development Commission and may be offered for a period of up to ten (10) years.

(2)(A) Benefits are conditioned upon the hiring of new full-time permanent employees with an annual payroll threshold of two million dollars (\$2,000,000) and certifying to the department that the requisite payroll threshold has been met.

(B) The eligible business receiving benefits under this subsection must certify annually to the department that the requisite payroll threshold has been met.

(C) The eligible business receiving benefits under this subsection must claim the rebate payment on an annual basis by certifying or recertifying payroll figures and filing the appropriate claim forms with the Department of Finance and Administration.

(D) Failure to certify or recertify payroll figures and claim the rebate payment annually shall result in:

(i) A ten-percent reduction of the earned rebate if not claimed within twelve (12) months from the end of the tax year in which the rebate was earned; or

(ii) A one hundred-percent forfeiture of the earned rebate if not claimed within twenty-four (24) months from the end of the tax year in which the rebate was earned.

(3) Payments are subject to the following conditions:

(A) For tier 1 counties, the benefit is three and nine-tenths percent (3.9%) of the annual payroll of new full-time permanent employees;

(B) For tier 2 counties, the benefit is four and one-quarter percent (4.25%) of the annual payroll of new full-time permanent employees;

(C) For tier 3 counties, the benefit is four and one-half percent (4.5%) of the annual payroll of new full-time permanent employees;

(D) For tier 4 counties, the benefit is five percent (5%) of the annual payroll of new full-time permanent employees; and

(E) The director may authorize benefits to a prospective eligible business up to five percent (5%) of the payroll of new full-time permanent employees if the following conditions exist:

(i) The prospective eligible business is considering a location in another state;

(ii) The prospective eligible business receives at least seventy-five percent (75%) of its sales revenues from out of state; and

(iii) The prospective eligible business is proposing to pay wages in excess of one hundred percent (100%) of the county average hourly wage of the county in which it locates.

(e)(1) Technology-based enterprises, as defined in § 14-164-203(12), may earn, at the discretion of the director, a payroll rebate equal to

five percent (5%) of the payroll for new full-time permanent employees for a period not to exceed ten (10) years.

(2) In order to qualify for the payroll rebate:

(A) The average hourly wage of the payroll for new full-time permanent employees must be at least one hundred seventy-five percent (175%) of the state or county average hourly wage, whichever is less, for the county in which the technology-based enterprise locates or expands;

(B) The payroll for new full-time permanent employees must exceed two hundred fifty thousand dollars (\$250,000); and

(C) The payroll rebate authorized by this subsection (e) may not be used in combination with the income tax credit based on payroll authorized by § 15-4-2709.

History. Acts 2003, No. 182, § 1; 2005, No. 1296, § 5; 2007, No. 1596, § 3; 2009, No. 625, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

“Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

Publisher’s Notes. Acts 2005, No. 1296, § 14, provided: “Effective Date. The benefits afforded by this act shall only apply to the qualified businesses approved by the Department of Economic Development with a signed financial incentive agreement dated on or after July 1, 2005.”

Acts 2007, No. 1596, § 6, provided: “The provisions of this act shall not be effective until the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of this act.”

Amendments. The 2005 amendment inserted “and may be offered ... years” in (d)(1); in (d)(2), inserted “with an annual ... (\$2,000,000)” and substituted “threshold has” for “thresholds have”; rewrote (d)(3)(A)-(D); and added (d)(3)(E).

The 2007 amendment inserted (d)(2)(B) and (C) and made related changes; inserted “hourly” in (d)(3)(E)(iii); and added (e).

The 2009 amendment rewrote (d)(2)(C).

15-4-2708. Research and development tax credits.

(a) A taxpayer who contracts with one (1) or more Arkansas colleges or universities in performing basic or applied research may qualify for

the tax credit established under § 26-51-1102(b) for qualified research expenditures, subject to the limitations established under § 26-51-1103 and the documentation requirements of § 26-51-1104.

(b)(1) New eligible businesses that conduct in-house research in a research facility operated by the business and that qualify for federal research and development tax credits may qualify for an income tax credit equal to twenty percent (20%) of the amount spent on in-house research that exceeds the base year for a period of three (3) years and the incremental increase in qualified research expenditures for the succeeding two (2) years, subject to the limitations established under § 26-51-1103.

(A) For a new research facility, the base year is zero (0). Therefore, in the first three (3) years following the date of the financial incentive agreement, all eligible expenditures will qualify for the credit.

(B) Qualified research and development expenditures in the third year shall be used as a base to calculate the tax credit in the fourth year.

(C) Qualified research and development expenditures in the fourth year shall be used as a base to calculate the tax credit in the fifth year.

(2) Existing eligible businesses that conduct in-house research in a research facility operated by the business and that qualify for federal research and development tax credits may qualify for an income tax credit equal to twenty percent (20%) of the amount spent on in-house research that exceeds the base year for a period of three (3) years and the incremental increase in qualified research expenditures for the succeeding two (2) years, subject to the limitations established under § 26-51-1103.

(A) For an existing research facility, the base year amount shall be the amount of eligible research and development expenditures incurred in the year prior to the year in which the financial incentive agreement was signed by the Arkansas Economic Development Commission.

(B) Qualified research and development expenditures in the third year shall be used as a base to calculate the tax credit in the fourth year.

(C) Qualified research and development expenditures in the fourth year shall be used as a base to calculate the tax credit in the fifth year.

(3) The income tax credit may be used to offset one hundred percent (100%) of an eligible business's annual income tax liability.

(4) Unused credits may be carried forward for a period not to exceed nine (9) years.

(5) A business claiming tax credits earned under this subsection may not receive the credit granted by § 26-51-1102(b) for the same expenditures.

(6)(A) The term of the financial incentive agreement for in-house research authorized by this subsection shall be for a period not to exceed five (5) years.

(B) The financial incentive agreement may be renewed for a period not to exceed five (5) years upon the submittal and approval of a new application and project plan for benefits under this subsection.

(C) The business claiming a tax credit under this subsection shall certify annually to the commission the amount expended on in-house research.

(c)(1) Targeted businesses may qualify for an income tax credit equal to thirty-three percent (33%) of the amount spent on in-house research per year for the first five (5) tax years following the business' signing a financial incentive agreement with the commission, subject to the limitations established under § 15-4-2709(d)(2)..

(2) The credits earned by targeted businesses may be sold as authorized in § 15-4-2709.

(d)(1) An Arkansas taxpayer may qualify for an income tax credit equal to thirty-three percent (33%) of the amount spent on the research for the first five (5) tax years following the business's signing a financial incentive agreement with the commission, subject to the limitations established under § 26-51-1103 if the taxpayer invests in:

(A) In-house research in a strategic research area; or

(B) Projects under the research and development programs of the Arkansas Science and Technology Authority when the projects directly involve an Arkansas business and are approved by the Board of Directors of the Arkansas Science and Technology Authority under rules promulgated by the authority for those programs.

(2) However, the maximum tax credit for a qualified business engaged in a research area of strategic value or involved in research and development programs sponsored by the authority shall not exceed fifty thousand dollars (\$50,000) per year.

(3) A business claiming tax credits earned under this subsection shall be prohibited from receiving the credit granted by § 26-51-1102(b) for the same expenditures.

(4)(A) A business claiming tax credits earned under this subsection may offset one hundred percent (100%) of the business's Arkansas income tax liability in any one (1) year.

(B) Any unused income tax credits may be carried forward for nine (9) years after the year in which the credit was first earned or until exhausted, whichever event occurs first.

(e) To claim the credit granted under subsections (b)-(d) of this section, the taxpayer shall file with his or her return, as an attachment to the form prescribed by the Director of the Department of Finance and Administration, copies of documentation to show that the authority has approved the research expenditure as a part of a qualified in-house research program or under the research and development programs of the authority.

History. Acts 2003, No. 182, § 1; 2005, No. 1232, § 3; 2005, No. 1296, § 6; 2007, No. 1596, §§ 4, 6; 2009, No. 716, § 9.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

"Department of Economic Development

renamed Arkansas Economic Development Commission.

"(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

"(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

"(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 7, provided: "The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act."

Publisher's Notes. Acts 2005, No. 1232, § 1, provided: "Legislative intent.

"(a) Accelerate Arkansas, a statewide group of volunteers whose mission is to foster economic growth in Arkansas by raising the average Arkansas wage to the level of the national average wage by using the essential building blocks of the knowledge-based economy to create an environment supporting entrepreneurship and continuous innovation, developed its five-point strategy to increase per capita income:

"(1) Support research and development that creates jobs;

"(2) Provide incentives that make risk capital available in the funding gap;

"(3) Encourage entrepreneurship and new enterprise development;

"(4) Sustain successful existing companies; and

"(5) Increase achievement in science, technology, engineering, and mathematics education.

"(b) These core strategies focus on the economic building blocks of research, entrepreneurship, risk capital, and the science and engineering workforce.

"(c) These core strategies are consistent with and supported by the findings in:

"(1) The Department of Economic Development's Report of the Task Force for the Creation of Knowledge-Based Jobs;

"(2) The Winthrop Rockefeller Foundation's Entrepreneurial Arkansas: Connecting the Dots; and

"(3) 'Arkansas' Position in the Knowledge-Based Economy', a report prepared by the Milken Institute and the Center for Business and Economic Research at the University of Arkansas."

Acts 2005, No. 1296, § 14, provided: "Effective Date. The benefits afforded by this act shall only apply to the qualified businesses approved by the Department of Economic Development with a signed financial incentive agreement dated on or after July 1, 2005."

Acts 2007, No. 1596, § 6, provided: "The provisions of this act shall not be effective until the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of this act."

Amendments. The 2005 amendment by No. 1232 inserted "or applied" in (a); added (b)(4); substituted "§ 15-4-709(d)(2)" for "§ 26-51-1103" in (c)(2); substituted "a qualified business" for "businesses" in (d)(2); and added (d)(4).

The 2005 amendment by No. 1296 inserted "or applied" in (a); added (b)(4); substituted "§ 15-4-2709(d)(3)" for "§ 26-51-1103" in (c)(1); inserted "(a) and (c)" in (d)(1); substituted "a qualified business" for "businesses" in (d)(2); and added (d)(4).

The 2007 amendment rewrote (b).

The 2009 amendment, in (d), substituted "§ 26-52-1103" for "§ 26-52-1103(a) and (c)" in (d)(1), and substituted "one hundred percent (100%)" for "fifty percent (50%)" in (d)(4)(A).

15-4-2709. Targeted business special incentive.

(a) A special incentive based on the payroll of the new targeted businesses in the state is established to:

(1) Encourage the development of jobs that pay significantly more than the county average hourly wage in the county in which the business locates or the state average hourly wage if the state average hourly wage is less than the county average hourly wage; and

(2) Provide an incentive to assist with the start-up of businesses targeted for growth.

(b) In order to qualify for the special incentive provided by subsection (c) of this section, a new business shall:

(1) Be identified by the Arkansas Economic Development Commission as being one of those business sectors targeted for growth under § 15-4-2703;

(2) Have an annual payroll of the business for Arkansas taxpayers of not less than one hundred thousand dollars (\$100,000) or more than one million dollars (\$1,000,000);

(3) Show proof of an equity investment of two hundred fifty thousand dollars (\$250,000) or more; and

(4) Pay average hourly wages in excess of one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.

(c)(1) A new targeted business may earn an income tax credit equal to ten percent (10%) of its annual payroll, with the maximum payroll credit not to exceed one hundred thousand dollars (\$100,000) in any year during the term of the financial incentive agreement.

(2)(A) The term of the financial incentive agreement shall be established by the Director of the Arkansas Economic Development Commission for a period not to exceed five (5) years.

(B) The term of the financial incentive agreement for new targeted businesses earning a tax credit under this subsection (c) or under § 15-4-2708(c) shall begin on January 1 of the year in which the financial incentive agreement was signed.

(C) The director may allow a qualified targeted business to sell any income tax credits earned through one (1) or more incentives authorized by this subchapter.

(d)(1) In order to sell income tax credits earned through incentives authorized by this subchapter, the new targeted business must apply to the commission and furnish information necessary to facilitate the sale of income tax credits.

(2)(A) Any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned or until exhausted, whichever occurs first.

(B) The ultimate recipient of the tax credits shall be subject to the same carry-forward provisions as the targeted business that earned the credits.

(C) The purchase of the tax credits will not establish a new carry-forward period for the ultimate recipient.

(e) A targeted business claiming or selling tax credits earned under this section or § 15-4-2708 shall be prohibited from receiving the credit granted by § 26-51-1102(b) for the same expenditures.

(f)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Innovate Arkansas Fund" for the support of a contract to provide support and assistance to the development and growth of knowledge-based and technology-based companies in the State of Arkansas.

(2) This fund shall be for the sole support of a contract between the commission and the entity selected to provide direct support and assistance to knowledge-based companies in the State of Arkansas.

(3) Moneys deposited into the Innovate Arkansas Fund by the General Assembly shall be used only through a contractual relationship between the commission and the entity selected to provide needed services to knowledge-based companies.

History. Acts 2003, No. 182, § 1; 2005, No. 1232, § 2; 2005, No. 1296, §§ 7, 8; 2007, No. 1596, § 5; 2009, No. 716, § 10.

A.C.R.C. Notes. The amendment of subsection (d) of this section by Acts 2005, No. 1232, conflicted with the amendment of subsection (d) of this section by Acts 2005, No. 1296. The A.C.R.C. could not reconcile the conflicting amendments in the codification of subsection (d) of this section. Pursuant to § 1-2-207, the amendment of subsection (d) of this section by Act 1296 prevails over the amendment of subsection (d) of this section by Act 1232, with the exception of the repeal of former subdivision (d)(2) of this section by Act 1232. Pursuant to Arkansas Constitution, Article 5, § 23, the A.C.R.C. does not construe the subsequent amendment of former subdivision (d)(2) of this section by Act 1296 as a reenactment of that subdivision. Accordingly, subsection (d) of this section as set out above reflects the application by the A.C.R.C. of the relevant statutory and constitutional provisions. Subsection (d) of this section was amended by Acts 2005, No. 1232 to read as follows: "(d)(1) In order to sell income tax credits earned through incentives authorized by this subchapter, the new targeted business must apply to the department and furnish information necessary to facilitate the sale of income tax credits.

"(2)(A) Credits maintained for use by the targeted business may be carried forward for a period not to exceed nine (9) years beyond the date of issuance.

"(B) The ultimate recipient of the tax credits shall be subject to the same provisions for carry forward as the targeted business that earned the credits.

"(C) The purchase of the tax credits will not establish a new carry forward period for the ultimate recipient."

Acts 2007, No. 1602, § 1, provided:

"Department of Economic Development renamed Arkansas Economic Development Commission.

"(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

"(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

"(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the

Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 7, provided: "The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act."

Publisher's Notes. Acts 2005, No. 1232, § 1, provided: "Legislative intent.

"(a) Accelerate Arkansas, a statewide group of volunteers whose mission is to foster economic growth in Arkansas by raising the average Arkansas wage to the level of the national average wage by using the essential building blocks of the knowledge-based economy to create an environment supporting entrepreneurship and continuous innovation, developed its five-point strategy to increase per capita income:

"(1) Support research and development that creates jobs;

"(2) Provide incentives that make risk capital available in the funding gap;

"(3) Encourage entrepreneurship and new enterprise development;

"(4) Sustain successful existing companies; and

"(5) Increase achievement in science, technology, engineering, and mathematics education.

"(b) These core strategies focus on the economic building blocks of research, entrepreneurship, risk capital, and the science and engineering workforce.

"(c) These core strategies are consistent with and supported by the findings in:

"(1) The Department of Economic Development's Report of the Task Force for the Creation of Knowledge-Based Jobs;

"(2) The Winthrop Rockefeller Foundation's Entrepreneurial Arkansas: Connecting the Dots; and

"(3) 'Arkansas' Position in the Knowledge-Based Economy', a report prepared by the Milken Institute and the Center for Business and Economic Research at the University of Arkansas."

Acts 2005, No. 1296, § 14, provided that "The benefits afforded by this act shall only apply to the qualified businesses approved by the Department of

Economic Development with a signed financial incentive agreement dated on or after July 1, 2005."

Acts 2007, No. 1596, § 6, provided: "The provisions of this act shall not be effective until the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of this act."

Amendments. The 2005 amendment by No. 1232 substituted "based on the payroll of the" for "for job creation by" in (a); substituted "one hundred thousand dollars (\$100,000)" for "two hundred thousand dollars (\$200,000)" in (b)(2); substituted "four hundred thousand dollars (\$400,000)" for "five hundred thousand dollars (\$500,000)" in (b)(3); substituted "in excess of ... whichever is less" for "as follows" in (b)(4); deleted former (b)(4)(A)-(D), (d)(2) and (d)(3)(A); inserted present (d)(2)(A); and redesignated former (d)(3)(B) and (C) as present (d)(2)(B) and (C).

The 2005 amendment by No. 1296 substituted "based on the payroll of the" for "for job creation by" in (a); substituted "one hundred thousand dollars (\$100,000)" for "two hundred thousand dollars (\$200,000)" in (b)(2); substituted "four hundred thousand dollars (\$400,000)" for "five hundred thousand dollars (\$500,000)" in (b)(3); substituted "in excess of ... is less" for "as follows" in (b)(4); deleted former (b)(4)(A)-(D); deleted former (d)(2); rewrote present (d)(2)(A); substituted "carry-forward provisions" for "provisions for carry forward" in present (d)(2)(B); and substituted "carry-forward" for "carry forward" in present (d)(2)(C).

The 2007 amendment inserted "hourly" in four places in (a)(1); inserted (c)(2)(B), and redesignated former (c)(2)(B) as present (c)(2)(C); and added (f).

The 2009 amendment substituted "two hundred fifty thousand dollars (\$250,000)" for "four hundred thousand dollars (\$400,000)" in (b)(3).

15-4-2710. Powers and duties of the Arkansas Economic Development Commission.

The Arkansas Economic Development Commission shall administer this subchapter and in addition to powers and duties mentioned in other laws may:

(1) Promulgate rules and regulations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to carry out the provisions of this subchapter;

(2) Provide the Department of Finance and Administration with a copy of each financial incentive agreement entered into by the commission with each qualifying business;

(3) Assist the governing authority in obtaining assistance from any other agency of state government, including assistance to new businesses and industries;

(4) Assist any employer or prospective employer with a qualifying project in obtaining the benefits of any incentive or inducement program authorized by state law;

(5) Act as a liaison between other state agencies and businesses and industries to ensure that both the spirit and intent of this subchapter are met;

(6) Make disbursements from the Economic Development Incentive Fund to qualified businesses as authorized in § 15-4-2707; and

(7) Negotiate proposals on behalf of the state with prospective businesses that are considering locating new facilities or expanding existing facilities that would seek the benefits of § 15-4-2706(b) or (e), § 15-4-2707, § 15-4-2708(c), or § 15-4-2709.

History. Acts 2003, No. 182, § 1; 2009, No. 716, § 11. substituted “Arkansas Economic Development Commission” for “Department of Economic Development.”

Amendments. The 2009 amendment

15-4-2711. Administration.

(a) A person claiming credit under the provisions of § 15-4-2706(c) is a “taxpayer” within the meaning of § 26-18-104(16) and shall be subject to all applicable provisions of that section.

(b) Administration of the provisions of § 15-4-2706(c) shall be under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(c)(1) All claims for sales and use tax refunds under § 15-4-2706(d) and (e) shall be filed annually with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.

(2) Claims filed after three (3) years from the date of the qualified purchase or purchases shall be disallowed.

(d)(1) The time limitation for § 15-4-2706(d) and (e) for filing claims shall be tolled if:

(A) A program participant fails to pay sales tax on an item that was taxable; and

(B) The applicable tax is subsequently assessed as a result of an audit by the Revenue Division.

(2) All claims for sales and use tax refunds relating to an audited purchase shall be entitled to a refund of interest paid on the amount of tax assessed on the audited purchase if a refund is approved for the purchase.

(e) A business must reach the investment thresholds under § 15-4-2706 within four (4) years from the date of the signed financial incentive agreement.

(f)(1) All claims for payroll rebate payments under § 15-4-2707 shall be certified to the Department of Finance and Administration and shall be recertified annually thereafter during the term of the financial incentive agreement.

(2) Failure to annually certify or recertify payroll figures and claim the rebate payment shall result in:

(A) A ten percent (10%) reduction of the earned rebate if not claimed within twelve (12) months from the end of the tax year in which the rebate was earned; or

(B) A one hundred percent (100%) forfeiture of the earned rebate if not claimed within twenty-four (24) months from the end of the tax year in which the rebate was earned.

(g)(1) If the annual payroll of the business applying for benefits under this subchapter is not met within twenty-four (24) months after signing the financial incentive agreement, the business may request in writing an extension of time to reach the required payroll threshold.

(2)(A) If the Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration find that the approved business has presented compelling reasons for an extension of time, the Director of the Arkansas Economic Development Commission may grant an extension of time not to exceed forty-eight (48) months.

(B) However, the extension on projects applying for benefits under § 15-4-2705 is limited to a twenty-four-month extension.

(3)(A) If a business fails to reach the annual payroll threshold before the expiration of the twenty-four (24) months or the time period established by a subsequent extension of time, the business will be liable for the repayment of all benefits previously received by the business.

(B) After a business has failed to reach the annual payroll threshold in a timely manner, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

(h)(1) If a business fails to reach the investment threshold before the expiration of the four-year time limit, the business will be liable for the repayment of all benefits previously received by the business.

(2) After a business has failed to reach the investment threshold of this subchapter in a timely manner, the Department of Finance and Administration shall have two (2) years to collect benefits previously

received by the business or file a lawsuit to enforce the repayment provisions.

(i)(1) If the annual payroll of a business receiving benefits under this subchapter falls below the payroll threshold for qualification in a year subsequent to the one in which it initially qualified for the incentive, the benefits outlined in the financial incentive agreement will be terminated unless the business files a written application for an extension of benefits with the Arkansas Economic Development Commission explaining why the payroll has fallen below the level required for qualification.

(2) The Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration may approve the request for extension of time, not to exceed twenty-four (24) months, for the business to bring the payroll back up to the requisite threshold amount and may approve the continuation of benefits during the period the extension is granted.

(3)(A) If a business fails to reach the payroll threshold before the expiration of the twenty-four (24) months or the time period established by a subsequent extension of time, the business shall be liable for the repayment of all benefits previously received by the business.

(B) After a business has failed to reach the payroll threshold in a timely manner, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

(j)(1) If a business fails to reach the average hourly wage requirement for benefits under this subchapter within twenty-four (24) months of the effective date of the financial incentive agreement, the business will be liable for the repayment of all benefits previously received by the business.

(2) After a business has failed to meet the hourly wage requirements, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

(k)(1) If a business fails to meet the nonretail business requirements of this subchapter, the business will be liable for the repayment of all benefits previously received by the business.

(2) After a business has failed to meet the nonretail business requirements, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

(l)(1) Eligible businesses whose qualification depends on receiving seventy-five percent (75%) of their sales revenue from out-of-state customers shall meet this requirement within three (3) years from the date of their financial incentive agreement.

(2)(A) If the requirement is not met within three (3) years of the signed financial incentive agreement, the business may request in writing an extension of time to reach the required sales threshold.

(B) If the Director of the Arkansas Economic Development Commission finds that the business has presented compelling reasons for

an extension of time, the Director of the Arkansas Economic Development Commission may grant an extension of time not to exceed twenty-four (24) months.

(m)(1) If a business fails to timely meet the out-of-state revenue requirements of this subchapter, the business will be liable for the repayment of all benefits previously received by the business.

(2) After a business has failed to meet the out-of-state revenue requirements, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

(n)(1) If a business fails to notify the Department of Finance and Administration that the annual payroll of the business has fallen below the payroll threshold for qualification for and retention of any incentive authorized by this subchapter, the business will be liable for the repayment of all benefits that were paid to the business after it no longer qualified for the benefits.

(2) After a business has failed to notify the Department of Finance and Administration that the business has fallen below the payroll threshold, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

(3) Interest shall also be due at the rate of ten percent (10%) per annum.

(o)(1) For a qualified business taking advantage of one (1) or more of the investment incentives offered in § 15-4-2706, if the project costs exceed the initial project cost estimate included in the approved financial incentive agreement, the business shall submit an amended project plan to include updated cost figures as soon as the cost overrun is recognized.

(2)(A) An amendment that exceeds twenty-five percent (25%) of the original financial incentive agreement estimate will not be considered and shall be submitted as a new project.

(B) An amendment shall not change the start date of the original project.

(p) The Department of Finance and Administration may obtain whatever information is necessary from a participating business and from the Department of Workforce Services to verify that a business that has entered into financial incentive agreements with the Arkansas Economic Development Commission is complying with the terms of the financial incentive agreements and reporting accurate information concerning investments, payrolls, and out-of-state revenues to the Department of Finance and Administration.

(q) The Department of Finance and Administration may file a lawsuit in the Pulaski County Circuit Court or the circuit court in any county where a program participant is located to enforce the repayment provisions of this subchapter.

(r)(1) If a business fails to satisfy or maintain any other requirement or threshold of this subchapter, the business will be liable for the

repayment of all benefits that were paid to the business after it no longer qualified.

(2) After a business has failed to comply with the requirements or thresholds of this subchapter, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

(s) If a repayment is required as a result of not complying with the requirements or thresholds of this subchapter, interest shall be due at the rate of ten percent (10%) per annum.

History. Acts 2003, No. 182, § 1; 2005, No. 1296, §§ 9-12; 2009, No. 625, § 2; 2009, No. 716, § 12.

Publisher's Notes. Acts 2005, No. 1296, § 14, provided: "Effective Date. The benefits afforded by this act shall only apply to the qualified businesses approved by the Department of Economic Development with a signed financial incentive agreement dated on or after July 1, 2005."

Amendments. The 2005 amendment, in (g)(1), substituted "is not met" for "does not reach the payroll threshold necessary to qualify for benefits authorized under this subchapter" and "business may request in writing for" for "applicant may request in writing"; substituted "approved" for "applicant's" in (g)(2)(A); inserted "annual" in (g)(3)(A) and (g)(3)(B); inserted "payroll" preceding "threshold" in

(i)(1) and (n)(1); substituted "time, not to exceed ... is granted" for "benefits not to exceed twenty-four (24) months, and may authorize an extension of time for the business to meet the payroll requirements of the incentive received" in (i)(2); added (i)(3); inserted "sales" in (l)(1); substituted "business" for "applicant" in (l)(2)(A); deleted "applicant" preceding "business" in (l)(2)(B); and substituted "that were paid to the business after it no longer qualified" for "previously received by the business" in (r)(1).

The 2009 amendment by No. 625 rewrote (f)(2).

The 2009 amendment by No. 716 inserted "within twenty-four (24) months of the effective date of the financial incentive agreement" in (j)(1).

15-4-2712. Restrictions.

(a) Except as provided in subsection (b) of this section, the incentives established by this subchapter may be combined.

(b)(1) The investment tax credit authorized in § 15-4-2706(c) may not be combined with the sales and use tax refund authorized in § 15-4-2706(d) for the same project.

(2) The job creation tax credits authorized in § 15-4-2709, the sales and use tax refund authorized in § 15-4-2706(e), and the research and development tax credit authorized in § 15-4-2708(c) may be combined with each other but may not be combined with any other incentives authorized in this subchapter during the period in which the business qualifies for benefits under § 15-4-2709.

(3) The job creation tax credit authorized in § 15-4-2705 may not be combined with the investment tax credit authorized in § 15-4-2706(b).

(4) The job creation tax credit authorized in § 15-4-2705 may not be combined with the payroll rebate program authorized in § 15-4-2707.

(5) The investment tax credit authorized in § 15-4-2706(b) may not be combined with the sales and use tax refund authorized in § 15-4-2706(d) for the same project.

(c) The following are discretionary incentives and are not available unless offered by the Arkansas Economic Development Commission:

- (1) The payroll rebate program authorized in § 15-4-2707;
- (2) The job creation tax credit authorized in § 15-4-2709;
- (3) The investment tax credit authorized in § 15-4-2706(b);
- (4) The sales and use tax refund authorized in § 15-4-2706(e); and
- (5) The research and development tax credit authorized in § 15-4-2708(c).

History. Acts 2003, No. 182, § 1; 2009, No. 716, § 13.

Amendments. The 2009 amendment, in (b), inserted “for the same project” in (b)(1), inserted (b)(4) and (b)(5), and made

a minor stylistic change; and substituted “Arkansas Economic Development Commission” for “Department of Economic Development” in (c).

15-4-2713. [Repealed.]

Publisher’s Notes. This section, concerning industrial development compacts, was repealed by Acts 2005, No. 1296,

§ 13. The section was derived from Acts 2003, No. 182, § 1.

15-4-2714. Coordination with other economic development programs.

(a) Eligible businesses that sign a financial incentive agreement with the Arkansas Economic Development Commission before March 3, 2003, shall be provided only the benefits for which they are qualified under any of the following:

(1) Biotechnology Training and Development Act, § 2-8-101 et seq. [repealed];

(2) Arkansas Economic Development Incentive Act of 1993, § 15-4-1601 et seq.;

(3) Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq.;

(4) Arkansas Economic Development Act of 1995, § 15-4-1901 et seq.;

(5) Economic Investment Tax Credit Act, § 26-52-701 et seq.; and

(6) Arkansas Emerging Technology Development Act of 1999, § 15-4-2101 et seq. [repealed].

(b) Eligible businesses signing a financial incentive agreement with the department after March 3, 2003, shall receive only the benefits for which they are qualified under this subchapter.

(c)(1) Under no circumstances shall an eligible business be entitled to receive incentives or benefits for a project under this subchapter and the programs listed in subsection (a) of this section.

(2) It is the specific intent of this subchapter that the incentives provided by this subchapter and the incentives provided by prior laws are mutually exclusive.

History. Acts 2003, No. 182, § 1; 2005, No. 1962, § 62.

Publisher’s Notes. The references to “Biotechnology Training and Development Act, § 2-8-101 et seq.” in (a)(1) and

“Arkansas Emerging Technology Development Act of 1999, § 15-4-2101 et seq.” in (a)(6) are now repealed.

Amendments. The 2005 amendment inserted “by this subchapter” in (c)(2).

SUBCHAPTER 28 — BIODIESEL INCENTIVE ACT

SECTION.

15-4-2801. Title.

15-4-2802. Definitions.

15-4-2803. Tax credit for biodiesel suppliers.

SECTION.

15-4-2804. Incentives for biodiesel producers.

15-4-2805. Rules and regulations.

Effective Dates. Acts 2003, No. 1287, § 2: effective for tax years beginning on or after January 1, 2003.

Acts 2005, No. 2223, § 3: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that petroleum is a nonrenewable energy source; that encouraging the use of nonpetroleum-based fuel is vital for the future of the environment and the economy; that this act promotes the use of other fuels; and that it is necessary that this act become effective on July 1, 2005, for the effective administration of the benefits provided in this act. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005."

Acts 2006 (1st Ex. Sess.), No. 10, § 2: Apr. 10, 2006. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas

that petroleum is a nonrenewable energy source; that encouraging the use of nonpetroleum-based fuel is vital for the future of the environment and the economy; that Arkansas Code § 15-4-2803 provided tax incentives for suppliers of biodiesel fuel; that the criteria for receiving the incentives has been interpreted in a restrictive way and therefore the incentive program has not had the impact intended; that this act corrects deficiencies in the incentive program; and that this act is immediately necessary in order for the incentive program to be effective. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-4-2801. Title.

This subchapter shall be known and may be cited as the "Biodiesel Incentive Act".

History. Acts 2003, No. 1287, § 1.

Effective Dates. Acts 2003, No. 1287,

§ 2: effective for tax years beginning on or after January 1, 2003.

15-4-2802. Definitions.

As used in this subchapter:

(1) "Biodiesel fuel" means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established under the Energy Policy Act of 1992, 42 U.S.C. §§ 13211 — 13219, as in effect on January 1, 2005;

(2) “Biodiesel mixture” means a mixture of biodiesel fuel and undyed, clear distillate special fuel that is suitable for use in motor vehicles on Arkansas highways and determined without regard to any use of kerosene that is:

(A) Sold by the supplier producing biodiesel mixture to any person for use as a fuel; or

(B) Used as a fuel by the supplier producing the biodiesel mixture;

(3) “Biodiesel producer” means a business located in the State of Arkansas that uses agricultural crops, agricultural residues, or waste products, excluding recycled oils, to manufacture biodiesel fuels;

(4) “Commission” means the Alternative Fuels Commission; and

(5) “Supplier” means any person who:

(A) Is customarily in the wholesale business of offering distillate special fuels or liquefied gas special fuels for resale or use to any person in this state; and

(B) Makes bulk sales of fuel.

History. Acts 2003, No. 1287, § 1; 2005, No. 2223, § 1.

Amendments. The 2005 amendment substituted “diesel fuel substitute ... January 1, 2005” for “renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meet the American Society for Testing and Material Specifi-

cation D6751-02 for biodiesel fuel, or B100, blend stock for distillate fuels, as in effect on February 1, 2003” in (1); added (2); and redesignated former (2) — (4) as present (3) — (5).

Effective Dates. Acts 2003, No. 1287, § 2: effective for tax years beginning on or after January 1, 2003.

15-4-2803. Tax credit for biodiesel suppliers.

(a) There shall be allowed a credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount as determined in subsection (b) of this section to a biodiesel supplier for the cost of the facilities and equipment used directly in the wholesale or retail distribution of biodiesel fuels.

(b) The amount of the credit allowed shall be equal to five percent (5%) of the cost of the facilities and equipment.

(c) The costs of service contracts, sales tax, or acquisition of undeveloped land shall not be included in determining the amount of the credit.

(d)(1) No income tax credit shall be claimed by a supplier for any facility or equipment that is in use on or before the certification of the company for tax credits or for which a tax credit was previously claimed by a supplier for any other tax year.

(2) The provisions of this subsection shall not apply if any entity is sold and the entity is entitled to an income tax credit under this subchapter.

(3) The tax credit provided in subsection (b) of this section may be carried forward for a period not to exceed three (3) years.

(e)(1) A supplier is entitled to a refund of all or a portion of the tax imposed on the supplier under §§ 26-56-201, 26-56-502, and 26-56-601.

(2)(A) The amount of the refund authorized in subdivision (e)(1) of this section shall be equal to fifty cents (50¢) for each gallon of biodiesel fuel used by the supplier to produce a biodiesel mixture for sale by the supplier or for use by the supplier in a trade or business.

(B) To the extent the gallons of biodiesel fuel mixed with undyed, clear distillate special fuel to make a biodiesel mixture exceed two percent (2%) of the total biodiesel mixture, the refund shall be limited to two percent (2%) of the total gallons of biodiesel mixture.

(3) The refund allowed under this subsection shall first be available to a supplier when:

(A) One (1) or more biodiesel producers:

(i) Sign a financial incentive agreement with the Arkansas Economic Development Council;

(ii) Are approved by the Alternative Fuels Commission as biodiesel producers with biodiesel fuel production capacity to produce at least one million gallons (1,000,000 gal.) of biodiesel fuel in a twelve-month period;

(iii) Certify that they will produce biodiesel fuel meeting appropriate federal and state standards; and

(iv) Begin production of biodiesel fuel; and

(B) The supplier is approved as a biodiesel supplier by the Director of the Department of Finance and Administration in accordance with rules promulgated by the director.

(4) A supplier may file a claim for refund for the sale or use of biodiesel mixture that occurred on or after the date that all of the requirements of subdivision (e)(3) of this section have been met.

(5)(A) A claim for refund under this subsection shall be filed quarterly, and in no event shall a claim be filed later than one (1) year after the sale or use of the biodiesel mixture under subdivision (e)(2) of this section.

(B) The total amount of refunds paid to a supplier during a calendar year shall not exceed the tax liability of the supplier under §§ 26-56-201, 26-56-502, and 26-56-601 during the calendar year.

(C) Except as otherwise provided in this subsection, a claim for refund under this subsection shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(6) The director shall promulgate rules for the administration and enforcement of this subsection.

(7) This subsection shall expire on June 30, 2007.

History. Acts 2003, No. 1287, § 1; 2005, No. 2223, § 2; 2006 (1st Ex. Sess.), No. 10, § 1.

A.C.R.C. Notes. Acts 2003, No. 1287, § 2: effective for tax years beginning on or after January 1, 2003.

Amendments. The 2005 amendment added (e).

The 2006 (1st Ex. Sess.) amendment deleted "that contains not more than two percent (2%) biodiesel and that is" following "mixture" in present (e)(2)(A); and added (e)(2)(B).

15-4-2804. Incentives for biodiesel producers.

(a) The Alternative Fuels Commission may provide grants not to exceed ten cents (10¢) per gallon of biodiesel fuel produced by a biodiesel producer who has met the qualifications prescribed by the commission under its regulations.

(b) The grants authorized by subsection (a) of this section shall be limited to the first five million (5,000,000) gallons of biodiesel fuel produced annually by a biodiesel producer qualified by the commission for a period not to exceed five (5) years.

(c) The grants authorized by subsection (a) of this section shall be disbursed from the Alternative Fuels Fund established under § 15-10-701 [repealed] and from the Health Adequacy Committee Fund, § 19-6-487 under the disbursement procedures to be established by the Department of Finance and Administration.

(d) The commission shall not authorize grants that exceed or may expect to exceed the balance of funds available or expected to be available in the fund.

(e) In the event the number of biodiesel producers qualified by the commission exceeds the balance of funds available to allow each qualified biodiesel producer to receive the maximum benefits under subsections (a) and (b) of this section, the commission shall suspend the qualification of additional biodiesel producers until such time as additional funds are available.

History. Acts 2003, No. 1287, § 1. § 2: effective for tax years beginning on or after January 1, 2003.
Effective Dates. Acts 2003, No. 1287, § 2: effective for tax years beginning on or after January 1, 2003.

15-4-2805. Rules and regulations.

The Alternative Fuels Commission shall promulgate regulations as necessary to implement the provisions of this subchapter.

History. Acts 2003, No. 1287, § 1. § 2: effective for tax years beginning on or after January 1, 2003.
Effective Dates. Acts 2003, No. 1287, § 2: effective for tax years beginning on or after January 1, 2003.

SUBCHAPTER 29 — ARKANSAS WORKFORCE INVESTMENT BOARD AND ADULT EDUCATION STUDY COMMITTEE

SECTION.

15-4-2901. Legislative findings and intent.

SECTION.

15-4-2902. Establishment — Members.

Effective Dates. Acts 2003, No. 1204, § 3: Apr. 9, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Workforce Investment Board and Adult Education Study Committee needs to meet and organize

itself as soon as possible to begin the work of the committee. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If

the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

15-4-2901. Legislative findings and intent.

(a) The General Assembly recognizes that adequate educational opportunities for adults are critical to the economic and social development of the state.

(b) The General Assembly finds that over four hundred ninety-one thousand eight hundred sixty-three (491,863) adults age eighteen (18) or older, approximately twenty-five percent (25%) of the adult population in Arkansas, lack a high school diploma or have not passed the General Educational Development Test, and thus there is a critical need for adult education and training services.

(c) It is the intent of this legislation to ensure that the limited funds available for adult education and training services are having the greatest possible impact on improving the skills and employment and earnings prospects of adults in Arkansas.

History. Acts 2003, No. 1204, § 1.

15-4-2902. Establishment — Members.

(a) There is established a committee to be known as the “Arkansas Workforce Investment Board and Adult Education Study Committee”.

(b) The committee shall consist of twenty-six (26) members as follows:

(1)(A) Thirteen (13) members appointed by the Arkansas Workforce Investment Board.

(B) Ten (10) of the members appointed by the board shall be a representative from a workforce center in each of the ten (10) local workforce investment areas of the state; and

(2)(A) Thirteen (13) members appointed by the Adult Education Section of the Department of Career Education.

(B) Ten (10) of the members appointed by the Adult Education Section of the Department of Career Education shall be a representative from an adult education program in each of the ten (10) local workforce investment areas of the state.

(c) The appointed committee members shall be residents of the State of Arkansas at the time of appointment and throughout their terms.

(d)(1) If a vacancy occurs in an appointed position for any reason, the vacancy shall be filled in the same manner as the original appointment.

(2) The new appointee shall serve for the remainder of the unexpired term.

(e) The board and the Adult Education Section of the Department of Career Education shall each name one (1) member to serve as cochair of the committee.

(f)(1) The committee shall meet at times and places that either of the cochairs deems necessary, but no meetings shall be held outside of the State of Arkansas.

(2) A majority of the members of the committee shall constitute a quorum for the purpose of transacting business.

(3) All actions of the committee shall be by a majority vote of the full membership of the committee.

(g) The committee shall:

(1) Review the programs and services offered by workforce centers and adult education programs and determine if those entities offer duplicative services;

(2) Determine the extent to which workforce centers and adult education programs are coordinating services to create a seamless system of education and training opportunities for adults; and

(3) Make specific recommendations for reducing unnecessary duplication of services and improving the coordination of services between workforce centers and adult education programs in the form of a written report to the Governor, the House Committee on Education, and the Senate Committee on Education on or before September 1, 2004, and an oral report to the House Committee on Education and the Senate Committee on Education as directed by the chairs of the respective legislative committees.

(h)(1) The Adult Education Section of the Department of Career Education and the board shall provide staff and meeting space to the committee.

(2)(A) Members of the committee shall serve without pay except members who receive compensation incidental to their regular employment.

(B) Members of the committee may receive expense reimbursement in accordance with § 25-16-902, to be paid by the Adult Education Section of the Department of Career Education or the board to the entities' respective appointees and to the extent money is available.

History. Acts 2003, No. 1204, § 2.

A.C.R.C. Notes. As enacted by Acts 2003, No. 1204, § 2, subsection (f) contained additional language which read as

follows: "The cochairs of the committee shall call the first organizational meeting within sixty (60) days of the effective date of this act [April 9, 2003]."

SUBCHAPTER 30 — ARKANSAS GENERAL OBLIGATION ECONOMIC DEVELOPMENT SUPERPROJECTS BOND AND PROJECT FUNDING ACT

SECTION.

15-4-3001. Title.

15-4-3002. Legislative findings.

15-4-3003. Definitions.

15-4-3004. Authority to issue bonds.

15-4-3005. State of Arkansas Economic
Development General Ob-
ligation Bonds.

SECTION.

15-4-3006. Qualification as a super-
project.

15-4-3007. Series of bonds.

15-4-3008. Purpose of bonds.

15-4-3009. Authorization of bonds.

15-4-3010. Form and delivery of bonds.

15-4-3011. Sale and price of bonds.

SECTION.

- 15-4-3012. Deposit of bond proceeds.
- 15-4-3013. Powers of the Arkansas Economic Development Commission.
- 15-4-3014. General obligations bonds.
- 15-4-3015. Annual determination of monies required for bond repayment.
- 15-4-3016. Exemption from taxes.
- 15-4-3017. Refunding bonds.
- 15-4-3018. Contractual obligations of state — Enforcement.

SECTION.

- 15-4-3019. No rights until first series of bonds sold and delivered — Outstanding bonds unaffected.
- 15-4-3020. Consent by qualified electors to issue bonds.
- 15-4-3021. Vote on issuance of bonds by qualified electors.
- 15-4-3022. Legal actions heard as preferred cause — Appeals.
- 15-4-3023. Construction.

Effective Dates. Acts 2003, No. 1751, § 24, provided: "This act becomes effective on the first day of the calendar month following the ninetieth (90th) day after the sine die adjournment of this session or the first (1st) day of the calendar month following the ninetieth (90th) day after a recess or adjournment for a period longer than ninety (90) days."

Acts 2003, No. 1751, § 25: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need to begin funding the Economic Development Superproject Project Fund created by this act in order to improve the state's competitive position in the recruitment of large economic development projects, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 2003 could work harm upon the economic condition of the state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Sections 24 and 25 of Acts 2003, No. 1751, contain conflicting effective date provisions.

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-4-3001. Title.

This subchapter may be referred to and cited as the "Arkansas General Obligation Economic Development Superprojects Bond and Project Funding Act".

History. Acts 2003, No. 1751, § 1.

15-4-3002. Legislative findings.

The General Assembly finds that:

(1) Independent studies have confirmed that the State of Arkansas and its people have not been able to participate in and enjoy the economic development benefits to be gained from the location in Arkansas of a superproject, as have many other southern states, resulting in a loss of opportunity for our citizens and a further loss for economic expansion in Arkansas;

(2) The government of the state must take bold steps to establish an adequate program for funding and financing superprojects;

(3) The location in Arkansas of superprojects will help alleviate severe economic instability and economic distress among the citizens of Arkansas; and

(4) A superprojects program will provide means for accelerated progress in the economic development of the state, thereby providing increased payrolls, job opportunities, and tax income to support the public services of this state.

History. Acts 2003, No. 1751, § 3.

15-4-3003. Definitions.

As used in this subchapter:

(1) "Authority" means the Arkansas Development Finance Authority and any successor agency or department;

(2) "Bonds" means bonds issued under this subchapter;

(3) "Commission" means the Arkansas Economic Development Commission;

(4) "Debt service" means principal, interest, redemption premiums, if any, and trustees', paying agents', dissemination agents', and like servicing fees relative to the bonds;

(5) "Develop" means to plan, design, construct, acquire by purchase or by eminent domain, own, operate, rehabilitate, lease as lessor or lessee, enter into lease-purchase agreements with respect to, lend, make grants in respect of, or install or equip any lands, buildings, improvements, machinery, equipment, or other properties of whatever nature, real, personal, or mixed;

(6) "Federal Deposit Insurance Corporation" means the federal agency by that name or any successor agency that insures deposits of commercial banks;

(7) "General revenues" means the revenues described and enumerated in § 19-6-201 et seq., or in any successor law;

(8) "Infrastructure of a superproject" means:

(A) Land acquisition;

(B) Site preparation;

(C) Road and highway improvements;

(D) Rail spur construction;

(E) Water service;

(F) Wastewater treatment;

(G) Employee training, which may include equipment used for the training;

(H) Environmental mitigation; and

(I) Training and research facilities and the necessary equipment for the facilities;

(9) "Investment" means money expended by the sponsor on capital assets directly related to the superproject and does not include amounts expended in aid of the superproject by the state pursuant to this subchapter, or otherwise, or amounts expended in aid of the superproject by a local entity, however financed;

(10) "Local entity" means any nonprofit corporation, county, city of the first class, city of the second class, incorporated town, improvement district, or school district in the state or any agency or instrumentality thereof, including the authority and the commission;

(11) "Nationally recognized rating agency" means Moody's Investors Service, Inc., Standard & Poor's Ratings Group, or any other nationally recognized rating agency approved by the Treasurer of State;

(12)(A) "New full-time permanent employee" means a position or job that was created pursuant to a signed incentive plan between the sponsor and the commission and that is filled by one (1) or more employees or contractual employees who are Arkansas taxpayers. The position or job held by the employee or employees must have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours' work per week.

(B) A contractual employee must be offered a benefits package comparable to a direct employee of the sponsor.

(13) "New job" means a position for a new full-time permanent employee created at a superproject in this state but does not include a job created when an employee is shifted from an existing location in this state to a new or expanded facility if the transferred job is from or to a superproject of the sponsor or a related person;

(14) "Person" means any local entity or any individual, corporation, trust, limited liability company, or partnership;

(15) "Project costs" means:

(A) All or any part of the costs of developing a superproject and costs incidental or appropriate to the project, including, without limitation, all costs to the commission associated with the development or operation of a superproject in a supervisory capacity; and

(B) Costs incidental or appropriate to the financing of the project, including, without limitation, capitalized interest, costs of issuance of and appropriate reserves for the bonds, loan or commitment fees, loan or grant administration fees, and costs for engineering, legal, and other administrative and consultant services;

(16) "Project fund" means the Economic Development Superprojects Project Fund created by this subchapter;

(17) "Related person" means any entity or person that bears a relationship to the sponsor as described in section 267 of the Internal Revenue Code of 1986, as it existed on February 1, 2003;

(18) “Sponsor” means a sole proprietor, partnership, corporation, limited liability company, or association taxable as a business entity or any combination of these entities;

(19) “State” means the State of Arkansas;

(20) “State Apportionment Fund” means the fund by that name created by § 19-5-201 or any successor law; and

(21) “Superproject” means infrastructure, land, buildings, and other improvements on the land and all other machinery, apparatus, equipment, office facilities, and furnishings that are necessary, suitable, or useful by a sponsor and in which a total of at least four hundred million dollars (\$400,000,000) is invested by the sponsor and at least four hundred (400) new jobs are created at the project by the sponsor.

History. Acts 2003, No. 1751, § 2.

Revenue Code, referred to in (17) is codi-

U.S. Code. Section 267 of the Internal

fied as 26 U.S.C. § 267.

15-4-3004. Authority to issue bonds.

(a)(1) The Arkansas Development Finance Authority, exercising an essential public function as the State of Arkansas’ bond-issuing authority, is authorized by this subchapter to issue bonds to fund superprojects.

(2) The authority shall be responsible for developing the bond financing portion of the plan required by § 15-4-3005.

(b)(1) As the lead economic development agency for the State of Arkansas, the Arkansas Economic Development Commission is authorized to utilize the superproject funding in attracting superprojects to Arkansas.

(2) The commission shall:

(A) Utilize economic impact and cost-benefit analysis to evaluate proposed superprojects;

(B) Be responsible for developing the portion of the plan concerning the selection and funding of the superprojects; and

(C) Be responsible for monitoring and reporting to the authority, the Governor, and the Legislative Council on the ongoing economic impact of the project and the sponsor’s progress in meeting the requirement for their economic development investment.

History. Acts 2003, No. 1751, § 4.

15-4-3005. State of Arkansas Economic Development General Obligation Bonds.

(a) The Arkansas Development Finance Authority may issue bonds of the State of Arkansas, to be known as “State of Arkansas Economic Development General Obligation Bonds”, in total principal amount not to exceed four hundred million dollars (\$400,000,000) for the purposes authorized in this subchapter.

(b) The bonds may be issued in one (1) or more series, as required, subject to the conditions and in compliance with the procedures provided by this subchapter.

(c) The total principal amount of bonds to be issued during any fiscal biennium shall not exceed sixty million dollars (\$60,000,000) unless the General Assembly shall have authorized by law a greater principal amount to be issued during a fiscal biennium.

(d) Before any bonds may be issued during any fiscal biennium, the Arkansas Economic Development Commission and the authority shall submit the plan to the Legislative Council and the Governor.

(e)(1) Upon receipt of the plan, the Governor shall confer with the Chief Fiscal Officer of the State concerning whether, after utilization of the balance in the Economic Development Superprojects Project Fund, any amount of general revenues will be required to be set aside for payment of debt service requirements in connection with the bonds during either year of the fiscal biennium in which the bonds are to be issued and, if any general funds are required to be used, whether such a use would cause an undue hardship upon any agency or program supported from the general revenues under the Revenue Stabilization Law, § 19-5-101 et seq.

(2) The commission's written plan shall set forth:

(A) A description of the project or projects to be financed with the proceeds derived from the sale of the bonds;

(B) A description of the economic impact and cost benefit of the proposed project or projects;

(C) The amount of bonds necessary to be issued to defray project costs and a budget of those costs;

(D) A certification by the Director of the Arkansas Economic Development Commission that each project to benefit from the expenditure of the proceeds of the bonds consists of an investment in the state of not less than four hundred million dollars (\$400,000,000) and the creation of no fewer than four hundred (400) new permanent full-time jobs; and

(E) A tentative time schedule setting forth the period of time during which the sum requested is to be expended.

(3) The authority's written plan shall set forth:

(A) A debt service table showing the annual principal and interest requirements for any bonds outstanding and to be issued; and

(B) A recommended plan of marketing for the bonds and proposed schedule of issuance dates based on the department's proposed spending schedule.

(f)(1) Upon the conclusion of the conference and after obtaining the advice of the Legislative Council, the Governor may by proclamation authorize the authority to proceed with the issuance of the bonds, in one (1) or more series, up to the maximum principal amount approved by the Governor for the fiscal biennium.

(2) If the Legislative Council fails to advise the Governor within thirty (30) calendar days after receipt of the request for advice, the Governor may proceed to issue the proclamation.

(g)(1) If the Governor declines or refuses to give his or her approval for the issuance of the bonds, the Governor shall promptly notify the authority in writing, and the bonds shall not be issued.

(2) The authority may resubmit a request to the Governor for the approval of the issuance of the bonds.

(3) The issue as resubmitted to the Governor shall be dealt with in the same manner as provided for the initial request to issue the bonds.

History. Acts 2003, No. 1751, § 5.

15-4-3006. Qualification as a superproject.

(a)(1) To qualify as a superproject, the investment and job creation requirements must be attained no later than the eighth year after the project first begins operations unless the eight-year period is extended by the Arkansas Economic Development Commission.

(2) The commission may extend the eight-year deadline for a reasonable period of time, taking into consideration general economic conditions.

(b) If the investment and job creation requirements are not attained within the eight-year deadline or the extended deadline as prescribed by the commission, the sponsor shall refund to the Arkansas Development Finance Authority any funds the sponsor received under this subchapter.

History. Acts 2003, No. 1751, § 6.

15-4-3007. Series of bonds.

(a) The bonds shall be issued in series in amounts sufficient to finance or refinance all or any part of a superproject's costs, with the respective series to be designated in alphabetical order or by the year in which issued, or both.

(b) Each series of bonds shall have such date as the Arkansas Development Finance Authority shall determine and shall mature or be subject to mandatory sinking fund redemption as determined by the authority over a period ending not later than thirty (30) years after the date of issuing the bonds of each series.

(c) Pending the issuance of bonds, the authority may issue temporary notes maturing not more than five (5) years after the date of issuance, to be exchanged for or paid from the proceeds of bonds at such time as the bonds may be issued.

(d)(1) Each series of the bonds shall bear interest at the rate or rates accepted by the authority.

(2) Interest shall be payable at such times as the authority shall determine.

(e) The bonds may:

(1) Be issued in the form;

(2) Be in the denominations;

- (3) Be made exchangeable for bonds of another form or denomination bearing the same rate of interest and date of maturity;
 - (4) Be made payable at the places within or without the state;
 - (5) Be made subject to redemption prior to maturity in the manner and for redemption prices; and
 - (6) Contain other terms and conditions as the authority shall determine.
- (f) The bonds shall have all of the qualities of negotiable instruments or securities under the laws of this state, subject to the provision for registration of ownership.

History. Acts 2003, No. 1751, § 7.

15-4-3008. Purpose of bonds.

- (a) Bonds shall be issued for the purpose of financing superprojects.
- (b) The proceeds of the bonds shall be applied:
 - (1) To the payment of project costs and the costs and expenses of issuance of the bonds;
 - (2) In connection with a superproject refinancing, to the repayment of indebtedness incurred to pay superproject costs; or
 - (3) For refunding of bonds as provided in this subchapter.

History. Acts 2003, No. 1751, § 8.

15-4-3009. Authorization of bonds.

- (a)(1) The bonds shall be authorized by resolution of the Arkansas Development Finance Authority.
- (2) Each resolution shall contain terms, covenants, and conditions as deemed desirable, including, without limitation, those pertaining to:
 - (A) The establishment and maintenance of funds and accounts;
 - (B) The deposit and investment of revenues and of bond proceeds; and
 - (C) The rights and obligations of the state, its officers and officials, the authority, and the registered owners of the bonds.
- (3)(A) The resolution of the authority may provide for the execution and delivery by the authority of a trust indenture or indentures with one (1) or more banks or trust companies located within or without the state, containing any of the terms, covenants, and conditions referred to in this subchapter.
- (B) The trust indenture or indentures shall be binding upon the state and its agencies, officers, and officials to the extent set forth in this subchapter.
- (b) Any resolution or trust indenture adopted or executed under this section shall provide that power is reserved:
 - (1) To apply to the payment of debt service on the bonds issued or secured under this subchapter all or any part of the revenues that may be derived from any superproject financed by the bonds or financed by the authority in some other manner; and

(2) To the extent of the revenues that the authority elects to apply to debt service, to release from any requirement of the resolution or trust indenture other revenues and resources of the state, including, without limitation, the Economic Development Superprojects Project Fund revenues or other revenues required to be transferred under this subchapter.

History. Acts 2003, No. 1751, § 9.

15-4-3010. Form and delivery of bonds.

(a) Each bond shall:

(1) Be signed with the manual or facsimile signatures of the Governor, the Chair of the Board of Directors of the Arkansas Development Finance Authority, and the Treasurer of State; and

(2) Have affixed, imprinted, or lithographed on the bond the Great Seal of the State of Arkansas.

(b) Interest coupons attached to the bonds, if any, shall be signed with the facsimile signature of the Treasurer of State.

(c) Delivery of the bonds and coupons shall be valid notwithstanding any change in persons holding such offices occurring after the bonds have been executed.

History. Acts 2003, No. 1751, § 10.

15-4-3011. Sale and price of bonds.

(a) The bonds may be sold in the manner, either at public or private sale, and upon terms as determined by the Arkansas Development Finance Authority to be reasonable and expedient for effectuating the purposes of this subchapter.

(b) The bonds may be sold at the price the authority determines acceptable, including sale at a discount.

(c) The authority may employ administrative agents, fiscal agents, underwriters, architects, accountants, engineers, and legal counsel and may pay them reasonable compensation from the proceeds of the bonds.

(d) The proceeds from the sale of the bonds may be used to pay:

(1) The fees of any trustee or paying agent;

(2) The costs of publication of notices;

(3) The costs of publication of the printing of the bonds;

(4) The costs of publication of official statements and other documents relating to the sale of the bonds;

(5) The fees of any rating agency; and

(6) Other reasonable costs incurred by the authority for issuing and selling the bonds.

History. Acts 2003, No. 1751, § 11.

15-4-3012. Deposit of bond proceeds.

(a) The proceeds from the sale of the bonds, together with all revenues derived by the Arkansas Development Finance Authority from any superproject financed or refinanced under this subchapter shall be deposited by the recipient, as received, into trust funds either established in the State Treasury or into accounts established outside the State Treasury in the name of the authority to accomplish the purposes of this subchapter, in amounts or portions as set forth in the resolution or trust indenture authorizing or securing the bonds issued to finance or refinance the superproject.

(b) There is created as a trust fund in the State Treasury an account designated as the "Economic Development Superprojects Project Fund" to provide for payment of all or a part of debt service on bonds issued under this subchapter and to directly fund superprojects on a pay-as-you-go basis should bonds neither be approved nor issued.

(c)(1) The Treasurer of State shall establish separate accounts and subaccounts within the project fund to correspond to the applicable series of bonds.

(2) In addition, there may be created in the State Treasury other funds, accounts, or subaccounts as the authority may determine to be necessary to accomplish the purposes of this subchapter.

(d) All procedures and methods for application of proceeds of any series of bonds to the financing or refinancing of superproject costs shall be developed in consultation with and approved by the Arkansas Economic Development Commission and shall be set forth in writings and shall be maintained as part of the records of the authority.

(e) Any arrangements undertaken pursuant to subsection (b) of this section whereby a local entity will administer funds composed in whole or in part of proceeds of bonds or disbursements from the project fund shall include provision for the auditing of the funds no less frequently than annually.

(f) The proceeds from the sale of the bonds together with all revenues derived by the authority from any superproject financed or refinanced under this subchapter may be invested and reinvested by the Treasurer of State in any of the following:

(1) Direct obligations of the United States, including obligations issued or held in book entry form on the books of the United States Department of the Treasury or obligations the principal of and interest on which are unconditionally guaranteed by the United States;

(2) Bonds, debentures, notes, or other evidences of indebtedness issued or guaranteed by any United States government agency if the obligations are backed by the full faith and credit of the United States;

(3) Non-full faith and credit senior debt obligations issued or guaranteed by United States government agencies;

(4) Money market funds investing exclusively in the investments described in subdivisions (f)(1)-(3) of this section;

(5)(A) Certificates of deposit providing for deposits secured at all times by collateral described in subdivisions (f)(1)-(3) of this section.

(B) The certificates must be issued by commercial banks whose deposits are insured by the Federal Deposit Insurance Corporation and whose collateral must be held by a third party.

(C) The Treasurer of State, or assigns, must have a perfected first security interest in the collateral;

(6) Certificates of deposit, savings accounts, deposit accounts, or money market deposits, all of which are fully insured by the Federal Deposit Insurance Corporation;

(7) Bonds or notes issued by this state or any municipality, county, or school district in this state, or any agency or instrumentality thereof;

(8) Investment agreements with financial institutions or insurance companies that are rated in one (1) of the two (2) highest rating categories of a nationally recognized rating agency;

(9) Repurchase agreements providing for the transfer of securities from a dealer bank or securities firm to the Treasurer of State, and the transfer of cash from the Treasurer of State to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the Treasurer of State in exchange for the securities at a specified date. Repurchase agreements must satisfy the following criteria:

(A) Repurchase agreements must be between the Treasurer of State and a dealer bank or securities firm described as follows:

(i) Dealers with at least one hundred million dollars (\$100,000,000) in capital; or

(ii) Banks whose deposits are insured by the Federal Deposit Insurance Corporation; and

(B) The written repurchase agreement contract must include the following:

(i) Securities that are acceptable for transfer are those listed in subdivisions (f)(1)-(3) of this section;

(ii) The term of the repurchase agreement may not exceed thirty (30) calendar days;

(iii) The collateral must be delivered to the Treasurer of State, a trustee if a trustee is not supplying the collateral, or a third party acting as agent for the trustee if the trustee is supplying the collateral before or simultaneous with payment; and

(iv)(a) The securities must be valued weekly, marked-to-market at current market price plus accrued interest.

(b)(1) The value of collateral must be equal to one hundred three percent (103%) of the amount of cash transferred by the Treasurer of State to the dealer bank or security firm under the repurchase agreement plus accrued interest.

(2) If the value of securities held as collateral declines below one hundred three percent (103%) of the value of the cash transferred by the Treasurer of State, then additional cash or acceptable securities, or both, must be transferred and held by the Treasurer of State; and

(10) Any other investment authorized by state law.

History. Acts 2003, No. 1751, § 12.

15-4-3013. Powers of the Arkansas Economic Development Commission.

In addition to powers conferred under other laws, the Arkansas Economic Development Commission may take any action necessary to carry out the purposes of this subchapter, including the power to:

(1) Provide loans and grants from bond proceeds or project revenues to local entities and to authorize local entities to make loans to other persons for financing superprojects;

(2) Cause the authority to purchase with bond proceeds or project revenues, bonds or notes from a local entity in order to provide funds for financing superprojects and to enter into note and bond purchase agreements in connection with those purchases;

(3) Fix, regulate, and collect rates, fees, rents, or other charges for making any loan or commitment under this subchapter and for performing accounting and loan servicing duties relating to the loans;

(4) Require audits of all accounts related to construction, operation, or maintenance of any superproject funded by this subchapter;

(5) Take reasonable actions necessary to ensure that debt service requirements are met;

(6) Refinance loans made by the Arkansas Development Finance Authority from whatever source to local entities in order to develop a superproject;

(7) Provide loans from bond proceeds or project revenues to local entities for the purpose of refinancing indebtedness of the local entity incurred for the purpose of financing a superproject; and

(8) Take any other action necessary to accomplish the purposes of this subchapter.

History. Acts 2003, No. 1751, § 13.

15-4-3014. General obligations bonds.

(a) The bonds shall be direct general obligations of the state for the payment of debt service on which the full faith and credit of the state are irrevocably pledged so long as any of the bonds are outstanding.

(b) The bonds shall be payable from the Economic Development Superprojects Project Fund and, if necessary, from general revenues, and such amount of general revenues as may be necessary is pledged to the payment of debt service on the bonds and shall be and remain pledged for those purposes.

History. Acts 2003, No. 1751, § 14.

15-4-3015. Annual determination of moneys required for bond repayment.

(a)(1) On or before commencement of each fiscal year, the Chief Fiscal Officer of the State shall determine the estimated amount

required for payment of all or a part of the debt service on the bonds issued during the fiscal year and deduct therefrom the estimated moneys to be available to the Arkansas Development Finance Authority from other sources and the amount available in the Economic Development Superprojects Project Fund to determine what amount of general revenues, if any, will be required.

(2) The Chief Fiscal Officer of the State shall certify the estimated amount to the Treasurer of State.

(3) The Treasurer of State shall then make monthly transfers from the project fund and, if necessary, from the State Apportionment Fund to the bond fund of the amount of general revenues as shall be required to pay the maturing debt service on the bonds.

(b)(1) The obligation to make monthly transfers of general revenues from the State Apportionment Fund to the bond fund shall constitute a first charge against the general revenues prior to all other uses to which the general revenues are devoted, either under present law or under any laws that may be enacted in the future.

(2) To the extent other general obligation bonds of the state may have been issued or may subsequently be issued, they shall rank on a parity of security with respect to payment from general revenues.

(c)(1) Moneys credited to the project fund shall be used for the purposes identified in § 15-4-3012(b), and for those purposes the Treasurer of State is designated as the disbursing officer to administer those funds in accordance with this subchapter.

(2) If no bonds are issued, upon the request of the Arkansas Economic Development Commission and with the approval of the Governor, moneys in the project fund may be used on a pay-as-you-go basis as department grants to local entities for infrastructure project costs.

(d) Moneys in the bond fund over and above the amount necessary to ensure the prompt payment of debt service on the bonds and the establishment and maintenance of a reserve fund, if any, may be used for the redemption of bonds prior to maturity in the manner and in accordance with the provisions pertaining to redemption prior to maturity as set forth in the resolution or trust indenture authorizing or securing the bonds.

History. Acts 2003, No. 1751, § 15.

15-4-3016. Exemption from taxes.

(a) All bonds issued under this subchapter and interest on the bonds are exempt from all state and local taxes.

(b) The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of bank, fiduciary, insurance company, trust, and public funds.

History. Acts 2003, No. 1751, § 16.

15-4-3017. Refunding bonds.

(a)(1) Bonds may be issued under this subchapter for the purpose of refunding any outstanding bonds issued pursuant to this subchapter.

(2) The Arkansas Development Finance Authority shall not be required to include bonds issued pursuant to this section in any written plan submitted to the Governor under § 15-4-3005, and the bonds shall not be subject to the requirements for the approval and proclamation of the Governor as set forth in § 15-4-3005.

(b)(1) The refunding bonds may be either sold for cash or delivered in exchange for the outstanding obligations.

(2) If sold for cash, the proceeds may be either applied to the payment of the obligations refunded or deposited in an irrevocable trust for the retirement thereof either at maturity or on an authorized redemption date.

(c)(1) Refunding bonds shall in all respects be authorized, issued, and secured in the manner provided for the bonds being refunded and shall have all the attributes of the refunded bonds.

(2) To the extent that the refunding bonds are not in a greater principal amount than the outstanding principal amount of the bonds being refunded, the principal amount of the refunding bonds shall not be subject to the limit of four hundred million dollars (\$400,000,000) set forth in § 15-4-3005(a) or the limit of sixty million dollars (\$60,000,000) set forth in § 15-4-3005(c).

(d) The resolution or trust indenture under which the refunding bonds are issued shall provide that any refunding bonds shall have the same priority of payment as was enjoyed by the obligations refunded.

History. Acts 2003, No. 1751, § 17.

15-4-3018. Contractual obligations of state — Enforcement.

(a) This subchapter shall constitute a contract between the state and the registered owners of all bonds issued under this subchapter that shall never be impaired, and any violation of its terms, whether under purported legislative authority or otherwise, shall be enjoined by the courts at the suit of any bondholder or any taxpayer.

(b)(1) In like suit against the Arkansas Development Finance Authority, the Treasurer of State, or other appropriate agency, officer, or official of the state, the courts shall prevent a diversion of any revenues pledged and shall compel the restoration of diverted revenues by injunction or mandamus.

(2) Without limitation as to any other appropriate remedy at law or in equity, any bondholder, by an appropriate action, including, without limitation, injunction or mandamus, may compel the performance under this subchapter of all covenants and obligations of the state and its officers and officials.

History. Acts 2003, No. 1751, § 18.

15-4-3019. No rights until first series of bonds sold and delivered — Outstanding bonds unaffected.

(a) This subchapter shall not create any right of any character, and no right of any character shall arise under it unless and until the first series of bonds authorized by this subchapter are sold and delivered.

(b) The issuance of bonds authorized by this subchapter shall not impair or affect any outstanding bonds of the Arkansas Development Finance Authority issued under prior acts.

History. Acts 2003, No. 1751, § 19.

15-4-3020. Consent by qualified electors to issue bonds.

(a) No bonds shall be issued under this subchapter except by and with the consent of a majority of the qualified electors of the state voting on the question in substantially the form described in this section at a special election called by proclamation of the Governor.

(b) The proclamation shall be issued in accordance with § 7-11-201 et seq., and notice of the special election shall be given by publication of the proclamation by one (1) insertion in one (1) newspaper of general circulation published in each county in the state not less than thirty (30) calendar days prior to the date of the election.

(c) If there is no newspaper regularly published in a county, the proclamation may be published in any newspaper having a general circulation in the county.

(d) In the case of the notice or proclamation for the election, it is not necessary to publish this subchapter in its entirety, but the notice or proclamation shall state that it is issued for the purpose of submitting to the people the following question:

“Shall the Arkansas Development Finance Authority be authorized to issue general obligation bonds under the authority of the Arkansas General Obligation Economic Development Superprojects Bond and Project Funding Act in total principal amount not to exceed four hundred million dollars (\$400,000,000), in series from time to time in principal amounts not to exceed, without prior approval of the General Assembly, sixty million dollars (\$60,000,000) in any fiscal biennium, for the financing and refinancing of superprojects as defined in the Arkansas General Obligation Economic Development Superprojects Bond and Project Funding Act, which bonds shall be secured by a pledge of the full faith and credit of the State of Arkansas?”

(e) The title of this subchapter shall be the ballot title, and there shall be printed on the ballot the proposition stated in subsection (d) of this section, and the following:

“FOR Issuance of State of Arkansas Economic Development Superprojects General Obligation Bonds _____”

“AGAINST Issuance of State of Arkansas Economic Development Superprojects General Obligation Bonds _____”

(f)(1) The county boards of election commissioners of the several counties of the state shall conduct the election.

(2) Each board shall take action with respect to the appointment of election officials and other matters as the law requires.

(3) The vote shall be canvassed and the result declared in each county by the several county boards.

(4) The results shall be certified within ten (10) calendar days after the date of the election by the county boards to the Secretary of State, who shall tabulate all returns so received and certify to the Governor the total vote for and against the proposition.

(5) The result of the election shall be proclaimed by the Governor by publication one (1) time in a newspaper published in the City of Little Rock, and the results as proclaimed shall be conclusive unless attacked in the courts within thirty (30) calendar days after the date of the publication.

History. Acts 2003, No. 1751, § 20; The 2007 amendment rewrote (b).
2005, No. 2145, § 58; 2007, No. 1049, The 2009 amendment substituted “§ 7-
§ 80; 2009, No. 1480, § 98. 11-201 et seq.” for “§ 7-5-103(b)” in (b).

Amendments. The 2005 amendment added (b)(2).

15-4-3021. Vote on issuance of bonds by qualified electors.

(a) If a majority of the qualified electors voting on the question vote for the issuance of the bonds, the Arkansas Development Finance Authority shall proceed with the sale and the issuance of the bonds as provided in this subchapter.

(b) If a majority of the qualified electors voting on the question vote against the issuance of the bonds, none of the bonds authorized by this subchapter shall ever be sold or issued.

History. Acts 2003, No. 1751, § 21.

15-4-3022. Legal actions heard as preferred cause — Appeals.

Any case involving the validity of this subchapter or involving the bonds issued under this subchapter shall be deemed of public interest and shall be advanced by all courts and heard as a preferred cause, and all appeals from judgments or decrees rendered in the cases must be taken within thirty (30) calendar days after rendition of the judgment or decree.

History. Acts 2003, No. 1751, § 22.

15-4-3023. Construction.

This subchapter shall:

- (1) Be liberally construed to accomplish its purposes;
- (2) Constitute the sole authority necessary to accomplish its purposes; and
- (3)(A) Be interpreted to supplement existing laws conferring rights and powers upon the Arkansas Development Finance Authority.

(B) The rights and powers under this subchapter shall be regarded as alternate methods for the accomplishment of the purposes of this subchapter.

History. Acts 2003, No. 1751, § 23.

SUBCHAPTER 31 — NONPROFIT INCENTIVE ACT OF 2005

SECTION.	SECTION.
15-4-3101. Title.	15-4-3106. Economic Development Incentive Fund — Payroll rebate.
15-4-3102. Legislative intent.	
15-4-3103. Definitions.	15-4-3107. Administration.
15-4-3104. Eligibility.	
15-4-3105. Sales and use tax refund.	

15-4-3101. Title.

This subchapter shall be known and may be cited as the “Nonprofit Incentive Act of 2005”.

History. Acts 2005, No. 1277, § 1.

15-4-3102. Legislative intent.

The General Assembly finds that:

- (1) Nonprofit organizations can make a significant contribution to the local economy of Arkansas communities;
- (2) In many instances, a nonprofit organization can locate its operations in any number of states, creating a situation in which an Arkansas community may be in the position of competing for the location with another community located out of state;
- (3) In situations in which a nonprofit organization is considering whether to locate its operations in Arkansas, it is important to have an inducement to help the nonprofit organization decide to locate in Arkansas; and
- (4) The offering of incentives to a nonprofit organization should occur only when the eligibility requirements in § 15-4-3104 are met.

History. Acts 2005, No. 1277, § 1.

15-4-3103. Definitions.

As used in this subchapter:

- (1) “Average hourly wage” means the weekly earnings, excluding overtime, bonuses, and company-paid benefits, of all new full-time permanent employees hired after the date of the signed financial incentive agreement, divided by the number of new full-time permanent employees, divided by forty (40);
- (2) “County or state average hourly wage” means the weighted average weekly earnings for Arkansas residents in all industries, both statewide and countywide, as calculated by the Department of Work-

force Services in its most recent "Annual Covered Employment and Earnings" publication, divided by forty (40);

(3) "Financial incentive agreement" means an agreement entered into by an eligible nonprofit organization and the Arkansas Economic Development Commission to provide the organization an incentive to locate or stay in Arkansas;

(4) "Governing authority" means the quorum court of a county or the governing body of a municipality;

(5) "Income" means the moneys received by a nonprofit organization for operations of the organization and includes donations, revenue from sales or memberships, grants, or legislative appropriations;

(6)(A)(i) "New full-time permanent employee" means a position or job that is:

(a) Created pursuant to the signed financial incentive agreement; and

(b) Filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned.

(ii) The position or job held by the employee or employees shall have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week.

(B) However, in order to qualify for the incentives authorized by this subchapter, a contractual employee shall be offered a benefits package comparable to that of a direct employee of the nonprofit organization seeking incentives under this subchapter;

(7) "Nonprofit organization" means an entity that has filed required documents with and been approved by the Secretary of State as having met the qualifications for a nonprofit organization in Arkansas and that also has received a § 501(c)(3), § 501(c)(6), or § 501(c)(9) designation from the Internal Revenue Service prior to applying for the benefits afforded under this subchapter;

(8) "Payroll" means the total taxable wages, including overtime and bonuses, paid during the preceding tax year of the eligible nonprofit organization to new full-time permanent employees hired after the date of the signed financial incentive agreement;

(9)(A) "Project" means:

(i) Preconstruction costs, including project planning costs, architectural or engineering fees, right-of-way purchases, utility extensions, site preparations, purchase of mineral rights, building demolition, builders' risk insurance, capitalized start-up costs, deposits and process payments on eligible machinery and equipment, and other costs necessary to prepare for the start of construction;

(ii) Costs associated with the construction of a new plant or facility, including, but not limited to, land, building, production equipment, or support infrastructure;

(iii) Costs associated with the expansion of an established plant or facility by adding to the building, production equipment, or support infrastructure; or

(iv) Costs associated with modernization of an established plant or facility through the replacement of production or processing equipment or support infrastructure that improves efficiency or productivity.

(B) "Project" does not mean:

(i) Expenditures for routine repair and maintenance that do not result in new construction or expansion;

(ii) Routine operating expenditures;

(iii) Expenditures incurred at multiple facilities; or

(iv) The purchase or acquisition of an existing business unless there is sufficient documentation that the existing business was closed and the purchase of the existing business will result in the retention of the jobs that would have been lost due to the closure.

(C) In order to receive credit for or refunds related to project costs, the costs shall be incurred within four (4) years from the date the financial incentive agreement was signed by the commission.

(D) Routine operating expenditures are ineligible for benefits under this subchapter;

(10) "Project plan" means the plan submitted to the department containing such information as may be required by the Director of the Arkansas Economic Development Commission to determine eligibility for benefits, and if approved, it becomes a supplement to the financial incentive agreement; and

(11) "Start of construction" means any activity that causes a physical change to the building or property identified as the site of the approved project, excluding engineering surveys, soil tests, land clearing, and extension of roads and utilities to the project site.

History. Acts 2005, No. 1277, § 1; inserted "§ 501(c)(6), or § 502(c)(9)" in (7), 2009, No. 795, § 1. and made a related change.

Amendments. The 2009 amendment

15-4-3104. Eligibility.

(a) A nonprofit organization that has a payroll of new full-time permanent employees in excess of five hundred thousand dollars (\$500,000) annually may apply for and receive any benefits authorized by this subchapter.

(b) In order to qualify for any benefits authorized by this subchapter, the nonprofit organization shall:

(1) Pay wages that average in excess of one hundred ten percent (110%) of the lesser of the county or state average wage; and

(2) Receive a minimum of seventy-five percent (75%) of its income from out-of-state sources.

(c) Hospitals, medical clinics, accredited academic educational institutions, and churches are specifically excluded from receiving the benefits authorized by this subchapter.

(d)(1)(A) Nonprofit organizations shall apply and qualify for benefits under § 15-4-3106 in order to receive the benefits under § 15-4-3105.

(B) A nonprofit organization cannot receive the sales and use tax refund without meeting the job creation requirements of this subchapter.

(2) A sales and use tax refund shall be made only if after the audit of expenditures and payroll by the Revenue Division of the Department of Finance and Administration, the Revenue Division determines that the nonprofit organization is in compliance with all qualifications to receive benefits under this subchapter.

(e) In order to receive the benefits authorized by this subchapter, the nonprofit organization applying for benefits shall sign a financial incentive agreement with the Arkansas Economic Development Commission prior to the start of any construction.

History. Acts 2005, No. 1277, § 1; 2009, No. 795, § 2. lars (\$500,000)" for "one million dollars (\$1,000,000)" in (a), and made minor stylistic changes.

Amendments. The 2009 amendment substituted "five hundred thousand dol-

15-4-3105. Sales and use tax refund.

(a)(1) An application for a sales and use tax refund under this subchapter shall be filed with the Arkansas Economic Development Commission and shall include an endorsement resolution from the governing authority of a municipality or county where the nonprofit organization is or will be located.

(2) The resolution shall:

(A) Endorse the applicant's participation in the sales and use tax refund program; and

(B) Authorize the refund of any sales and use tax levied by the municipality or county.

(b)(1) The Director of the Department of Finance and Administration shall authorize a sales and use tax refund of state and local sales and use taxes, excepting the sales and use tax dedicated to the Educational Adequacy Fund, as authorized by § 19-5-1227, and the Conservation Tax Fund, as authorized by § 19-6-484, on the purchases by the nonprofit organization of the material used in the construction of a building or buildings or any addition, modernization, or improvement for housing any new or expanding nonprofit organization and machinery and equipment to be located in or in connection with a building.

(2) To qualify for the sales and use tax refund under this section, a qualified nonprofit organization shall spend in excess of two hundred fifty thousand dollars (\$250,000) on buildings, machinery, and equipment in the new or improved facility.

(3) A refund shall not be authorized for:

(A) Routine operating expenditures; or

(B) The purchase of items previously purchased as part of a project under this section unless the items previously purchased are necessary for the implementation or completion of the project.

(c) Subject to the approval of the commission, a program participant may make changes in a project by written amendment to the project

plan filed with the commission, provided that the amendment complies with § 15-4-3107(h)(2).

(d) All claims for sales and use tax refunds under this section shall be denied unless they are filed with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.

History. Acts 2005, No. 1277, § 1; dollars (\$250,000)” for “five hundred thousand dollars (\$500,000)” in (b)(2), and 2009, No. 795, § 3.

Amendments. The 2009 amendment substituted “two hundred fifty thousand made a minor stylistic change.

15-4-3106. Economic Development Incentive Fund — Payroll rebate.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Economic Development Incentive Fund”.

(b) The fund shall consist of revenues designated for this fund by the Director of the Department of Finance and Administration pursuant to agreements entered into by the Arkansas Economic Development Commission with qualified nonprofit organizations.

(c) After the Department of Finance and Administration has received the certification of the payroll of a nonprofit organization that has entered into financial incentive agreements with the commission for the payroll rebate authorized by this section, the Director of the Department of Finance and Administration shall transfer the appropriate amount of money for the payroll rebate designated by the financial incentive agreement from the General Revenue Fund Account of the State Apportionment Fund to the Economic Development Incentive Fund.

(d)(1) The award of the incentive authorized by this section is at the discretion of the Director of the Arkansas Economic Development Commission.

(2) Benefits are conditioned upon the hiring of new full-time permanent employees and certifying to the Department of Finance and Administration that the requisite payroll thresholds have been met.

(3) The requisite annual payroll of five hundred thousand dollars (\$500,000) shall be reached within twenty-four (24) months of the signing of the financial incentive agreement for the benefits of this section to be approved.

(4) If the Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration find that the nonprofit organization has presented compelling reasons for an extension of time, the Director of the Arkansas Economic Development Commission may grant an extension of time not to exceed twenty-four (24) months to reach the requisite annual payroll of five hundred thousand dollars (\$500,000).

(5) In addition to having an annual payroll of five hundred thousand dollars (\$500,000) or more, the nonprofit organization applying for

benefits under this subchapter shall pay average hourly wages in excess of one hundred ten percent (110%) of the lesser of the state or county average wage for the county in which the organization locates or expands.

(6) Payments to a nonprofit organization with an annual payroll in excess of five hundred thousand dollars (\$500,000) shall be considered and may be authorized by the Director of the Arkansas Economic Development Commission, after the Director of the Arkansas Economic Development Commission has signed a financial incentive agreement with the nonprofit organization, in the amount of four percent (4%) of the annual payroll of the new full-time permanent employees.

(7) The Director of the Arkansas Economic Development Commission may authorize a payroll rebate for up to five (5) years.

History. Acts 2005, No. 1277, § 1; 2009, No. 795, § 4.

Amendments. The 2009 amendment substituted “five hundred thousand dol-

lars (\$500,000)” for “one million dollars (\$1,000,000)” in (d)(3) through (d)(6), and made a minor stylistic change in (d)(6).

15-4-3107. Administration.

(a)(1) All claims for sales and use tax refunds under § 15-4-3105 shall be filed annually with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.

(2) Claims filed after three (3) years from the date of the qualified purchase or purchases shall be disallowed.

(b)(1) The time limitation imposed by § 15-4-3105 for filing claims shall be tolled if:

(A) A nonprofit organization fails to pay sales or use tax on an item that was taxable; and

(B) The applicable tax is subsequently assessed as a result of an audit by the Revenue Division.

(2) All claims for sales and use tax refunds relating to an audited purchase shall be entitled to a refund of interest paid on the amount of tax assessed on the audited purchase if a refund is approved for the purchase.

(c) A nonprofit organization must reach the investment threshold under § 15-4-3105(b)(2) within four (4) years from the date of the signed financial incentive agreement.

(d)(1) All claims for payroll rebates under § 15-4-3106 shall be certified to the Department of Finance and Administration and shall be recertified annually during the term of the financial incentive agreement.

(2) Failure to certify payroll figures and recertify those figures annually may result in a denial of payments.

(3)(A) If the annual payroll of the nonprofit organization applying for benefits under this subchapter is not met within twenty-four (24) months after the signing of the financial incentive agreement, the

nonprofit organization may request in writing an extension of time to reach the required payroll threshold.

(B) If the Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration find that the nonprofit organization has presented compelling reasons for an extension of time, the Director of the Arkansas Economic Development Commission may grant an extension of time not to exceed twenty-four (24) months.

(e)(1) If the annual payroll of a nonprofit organization receiving benefits under this subchapter falls below the threshold for qualification in a year subsequent to the one in which it initially qualified for the incentive, the benefits outlined in the financial incentive agreement shall be terminated unless the nonprofit organization files a written application for an extension of benefits with the Arkansas Economic Development Commission explaining why the payroll has fallen below the level required for qualification.

(2) The Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration may approve the request for extension of time, not to exceed twenty-four (24) months, for the nonprofit organization to bring the payroll back up to the requisite payroll threshold amount and may approve the continuation of benefits during the period the extension is granted.

(3) If a nonprofit organization fails to reach the payroll threshold before the expiration of the twenty-four (24) months or the time period established by a subsequent extension of time, the nonprofit organization shall be liable for repayment of all payroll benefits previously received by the nonprofit organization.

(f)(1) If a nonprofit organization fails to maintain the average hourly wage requirements for benefits under this subchapter, the nonprofit organization shall be liable for the repayment of all payroll benefits previously received by the nonprofit organization.

(2) After a nonprofit organization has failed to maintain the average hourly wage requirements, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the nonprofit organization or to file a lawsuit to enforce the repayment provisions.

(g)(1) If a nonprofit organization fails to notify the Department of Finance and Administration that the annual payroll of the nonprofit organization has fallen below the threshold for qualification for and retention of any incentive authorized by this subchapter, the nonprofit organization shall be liable for the repayment of all payroll benefits that were paid to the nonprofit organization after it no longer qualified for the benefits.

(2) After a nonprofit organization has failed to notify the Department of Finance and Administration that the nonprofit organization has fallen below the payroll threshold, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the nonprofit organization or to file a lawsuit to enforce the repayment provisions.

(3) Interest shall also be due at the rate of ten percent (10%) per annum.

(h)(1) If the project costs of a qualified nonprofit organization taking advantage of the sales and use tax refund offered in § 15-4-3105 exceed the initial project cost estimate included in the approved financial incentive agreement, the nonprofit organization shall submit an amended project plan to include the updated cost figures as soon as the cost overrun is recognized.

(2)(A) Amendments that exceed twenty-five percent (25%) of the original financial incentive agreement estimate shall not be considered and shall be submitted as a new project.

(B) An amendment shall not change the start date as specified in the original project.

(i) The Department of Finance and Administration may obtain necessary information from a participating nonprofit organization and from the Department of Workforce Services to verify that a nonprofit organization that has entered into financial incentive agreements with the commission is complying with the terms of the financial incentive agreements and reporting accurate information concerning investments and payrolls to the Department of Finance and Administration.

(j) The Department of Finance and Administration may file a lawsuit in Pulaski County Circuit Court or the circuit court in any county where a qualifying nonprofit organization is located to enforce the repayment provisions of this subchapter.

(k) The commission shall have the power to promulgate rules necessary to implement, enforce, and administer this subchapter.

History. Acts 2005, No. 1277, § 1.

SUBCHAPTER 32 — ARKANSAS AMENDMENT 82 IMPLEMENTATION ACT

SECTION.

- 15-4-3201. Title.
- 15-4-3202. Definitions.
- 15-4-3203. Amendment 82 project qualification.
- 15-4-3204. Amendment 82 agreement.
- 15-4-3205. Penalties.
- 15-4-3206. Compliance time period — Audit requirements.
- 15-4-3207. Maximum ceiling on bond principal.
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- 15-4-3209. Series of bonds.
- 15-4-3210. Authorization of bonds.
- 15-4-3211. Form and delivery of bonds.
- 15-4-3212. Sale and price of bonds.
- 15-4-3213. Deposit of bond proceeds.
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SECTION.

- 15-4-3216. Exemption from taxes.
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- 15-4-3219. No rights until first series of bonds sold and delivered — Outstanding bonds unaffected.
- 15-4-3220. Legal actions heard as preferred cause — Appeals.
- 15-4-3221. Monitoring and reporting.
- 15-4-3222. Release of information.
- 15-4-3223. Power and duties of the Arkansas Economic Development Commission and the Arkansas Development Finance Authority.
- 15-4-3224. Public reporting requirements.

Effective Dates. Acts 2005, No. 1981, § 4: Apr. 11, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the State of Arkansas has been disadvantaged in its ability to effectively compete for large economic development projects due to its inability to quickly raise revenues through the issuance of general obligation bonds; that attracting a project would significantly benefit the economic development of the state by providing increased payrolls, job opportunities, and tax income; that the citizens of the State of Arkansas recognized the missed opportunities caused by this competitive disadvantage through their overwhelming ap-

proval of Amendment 82; and that this act is immediately necessary in order to effectuate the will of the people and position the State of Arkansas to act expeditiously in securing a project in the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-4-3201. Title.

This subchapter shall be known and may be cited as the "Arkansas Amendment 82 Implementation Act".

History. Acts 2005, No. 1981, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Natural Resources and Economic Development, 28 U. Ark. Little Rock L. Rev. 375.

15-4-3202. Definitions.

As used in this subchapter:

(1) "Amendment 82 agreement" means a contract between the state and a sponsor under which the state is to provide Amendment 82 bond financing in exchange for the sponsor's agreeing to make an investment and to locate a new business or substantially expand an existing business in the State of Arkansas in accordance with the requirements of Arkansas Constitution, Amendment 82, and this subchapter. At a minimum, the agreement shall contain the following provisions:

(A) The infrastructure needs to be provided by the state in support of the qualified Amendment 82 project and financed under Arkansas Constitution, Amendment 82, and this subchapter;

(B) A description of all other economic incentives to be provided by the state in connection with the qualified Amendment 82 project;

(C) The commitments of the sponsor with regard to investment and job creation associated with the qualified Amendment 82 project, including timetables for meeting and maintaining the investment and job creation requirements;

(D) The agreement of the sponsor to make all specified records pertaining to investment and job creation requirements under Arkansas Constitution, Amendment 82 available for annual audit by the Chief Fiscal Officer of the State and, upon request, but no more often than annually, by the Office of Economic and Tax Policy of the Bureau of Legislative Research or a person or entity retained by the office;

(E) Performance benchmarks and economic goals of the qualified Amendment 82 project; and

(F) The penalties to be applied if the sponsor does not satisfy its commitments under the Amendment 82 agreement;

(2) "Average hourly wage" means the weekly earnings, excluding overtime, bonuses, and company-paid benefits, of all new full-time permanent employees hired after the execution date of the Amendment 82 agreement divided by forty (40), and then divided by the number of new full-time permanent employees;

(3) "Bonds" means general obligation bonds issued under Arkansas Constitution, Amendment 82, and this subchapter;

(4) "Chief Fiscal Officer of the State" means the Chief Fiscal Officer of the State of Arkansas, who is also the Director of the Department of Finance and Administration;

(5) "Contractual employee" means an employee who:

(A) May be included in the payroll calculations of a sponsor qualifying for bond financing under Arkansas Constitution, Amendment 82, and this subchapter and is under the direct supervision of the sponsor receiving benefits under Arkansas Constitution, Amendment 82, and this subchapter, but is an employee of a business other than the one receiving benefits under Arkansas Constitution, Amendment 82, and this subchapter;

(B) Otherwise meets the requirements of a new full-time permanent employee of the sponsor receiving benefits under Arkansas Constitution, Amendment 82, and this subchapter;

(C) Receives an average hourly wage that exceeds the lesser of:

(i) The county average hourly wage for the county in which the position or job is located; or

(ii) The state average hourly wage; and

(D) Receives a benefits package, including, without limitation, health and retirement benefits comparable to direct employees of the sponsor receiving benefits under Arkansas Constitution, Amendment 82, and this subchapter;

(6) "County average hourly wage" means the weighted average weekly earnings for Arkansas residents in all industries countywide as calculated by the Department of Workforce Services in its most recent "Annual Covered Employment and Earnings" publication, divided by forty (40);

(7) "Debt service" means principal, interest, redemption premiums, if any, and servicing fees relative to the bonds, including, without limitation:

- (A) Trustees' fees;
 - (B) Paying agents' fees;
 - (C) Dissemination agents' fees;
 - (D) Administrative fees;
 - (E) Issuer's fees;
 - (F) Guarantee fees;
 - (G) Counsel fees; and
 - (H) Fees related to arbitrage compliance or rebate calculations;
- (8)(A) "Existing employee" means an employee hired by a sponsor before the date the Amendment 82 agreement was executed.

(B) An existing employee may be considered a new full-time permanent employee for purposes of Arkansas Constitution, Amendment 82 and this subchapter only if:

(i) The position or job filled by the existing employee was created in accordance with the Amendment 82 agreement; and

(ii) The position vacated by the existing employee was filled by a subsequent employee who was not an existing employee, or no subsequent employee will be hired because the sponsor no longer conducts the particular business activity requiring that employee;

(9) "Federal Deposit Insurance Corporation" means the federal agency by that name or any successor agency that insures deposits of commercial banks;

(10) "Gross general revenues" means the revenues described and enumerated in § 19-6-201 or in any successor law;

(11) "Infrastructure needs" means:

- (A) Land acquisition;
- (B) Site preparation;
- (C) Road and highway improvements;
- (D) Rail spur construction;
- (E) Water service;
- (F) Wastewater treatment;
- (G) Employee training, which may include equipment used for the training;

(H) Environmental mitigation;

(I) Training and research facilities and the necessary equipment for the facilities; or

(J) Any other facility, activity, or infrastructure determined by the General Assembly to fall within the parameters of Arkansas Constitution, Amendment 82;

(12)(A) "Investment" means money expended by the sponsor on capital assets physically located within the state and directly related to the qualified Amendment 82 project, but which are not required to be owned by the sponsor.

(B) "Investment" shall not include amounts expended in aid of the qualified Amendment 82 project by the state under Arkansas Constitution, Amendment 82, and this subchapter, or otherwise, or amounts expended in aid of the qualified Amendment 82 project by a local entity, however financed, which are not required to be repaid by the sponsor;

(13) "Letter of commitment" means a binding agreement signed by a sponsor and the Arkansas Economic Development Commission, which at minimum contains the following provisions:

(A) A determination by the commission that the sponsor has the financial capability, business history, and corporate intent to implement and maintain a qualified Amendment 82 project;

(B) A commitment by the sponsor that the sponsor intends to locate a new business or substantially expand an existing business in the State of Arkansas that will require an investment by the sponsor of more than five hundred million dollars (\$500,000,000) and will create more than five hundred (500) new jobs;

(C) A tentative timetable for development of the proposed project;

(D) The consequences if the sponsor does not satisfy its obligations under the letter of commitment; and

(E) A statement from the commission that its obligation under the letter of commitment is limited to presenting the letter of commitment and supporting documentation to the Governor, who may or may not elect to present the proposal to the General Assembly for its consideration;

(14) "Local entity" means any nonprofit corporation, county, city of the first class, city of the second class, incorporated town, improvement district, school district, or any agency or instrumentality of the state, including the Arkansas Development Finance Authority and the commission;

(15) "Nationally recognized rating agency" means Moody's Investors Service, Standard & Poor's Ratings Service, Fitch, Inc., or any other nationally recognized rating agency approved by the Treasurer of State;

(16) "Net general revenues" means the amount specified in § 19-5-202(b)(2)(B)(iii), otherwise known as net general revenues of the state available for distribution;

(17) "New full-time permanent employee" means a position or job that is created under an Amendment 82 agreement and that is filled by one (1) employee or contractual employee who is an Arkansas taxpayer. In order to count toward the job creation requirements of Arkansas Constitution, Amendment 82, and this subchapter:

(A) The position or job held by the employee must be filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours' work per week;

(B) The employee must receive an average hourly wage that exceeds the lesser of:

(i) The county average hourly wage for the county in which the position or job is located; or

(ii) The state average hourly wage;

(C) The employee must receive a benefits package, including, without limitation, health and retirement benefits; and

(D) The employee is not an existing employee;

(18)(A) "New job" means a position for a new full-time permanent employee created at a qualified Amendment 82 project in the state.

(B) "New job" shall not include a job filled by an existing employee;

(19) "Other needs" means financial or other noninfrastructure incentives that are approved by the General Assembly as part of a qualified Amendment 82 project and may include, without limitation, transactions that include loans, grants, or lease arrangements;

(20) "Outstanding bonded indebtedness" means the principal balance of all bonds issued under Arkansas Constitution, Amendment 82 and this subchapter;

(21) "Project costs" means:

(A) All or any part of the costs of developing a proposed or qualified Amendment 82 project and costs incidental or appropriate to the proposed or qualified Amendment 82 project, including, without limitation, all costs to the commission associated with the development or operation of a qualified Amendment 82 project in a supervisory capacity; and

(B) Costs incidental or appropriate to the financing of the proposed or qualified Amendment 82 project, including, without limitation:

(i) Capitalized interest;

(ii) Costs of issuance;

(iii) Funding of appropriate reserves for the bonds;

(iv) Loan fees;

(v) Guarantee fees;

(vi) Commitment fees;

(vii) Grant administration fees;

(viii) Surety bond premiums;

(ix) Bond insurance;

(x) Credit enhancement;

(xi) Fees of nationally recognized rating agencies;

(xii) Liquidity facilities fees; and

(xiii) Costs for engineering, legal, and other administrative and consultant services;

(22) "Proposed project" means a project which if developed as proposed would meet the criteria for a qualified Amendment 82 project and is therefore properly considered under Arkansas Constitution, Amendment 82, and this subchapter;

(23) "Qualified Amendment 82 project" means a proposed project that has satisfied the requirements of Arkansas Constitution, Amendment 82, and this subchapter with respect to which the General Assembly has approved the issuance of bonds under Arkansas Constitution, Amendment 82, and this subchapter;

(24) "Related entity" means any entity or person that bears a relationship to the sponsor as described in section 267 of the Internal Revenue Code of 1986, as in existence on January 1, 2005;

(25) "Sponsor" means a sole proprietor, partnership, corporation, limited liability company, joint venture, or association taxable as a business entity, or any combination of these entities, that qualifies as an eligible business under the Consolidated Incentive Act of 2003, § 15-4-2701 et seq.; and

(26) "State average hourly wage" means the weighted average weekly earnings for Arkansas residents in all industries statewide as calculated by the Department of Workforce Services in its most recent "Annual Covered Employment and Earnings" publication, divided by forty (40).

History. Acts 2005, No. 1981, § 1.

15-4-3203. Amendment 82 project qualification.

(a)(1) In exercising its responsibilities under Arkansas Constitution, Amendment 82, the General Assembly delegates, authorizes, and directs the Arkansas Economic Development Commission, the Arkansas Development Finance Authority, and the Chief Fiscal Officer of the State to undertake a review of all proposed projects following the procedures described in this section.

(2) If the Governor refers a proposed project to the General Assembly under subsection (h) of this section, the commission and the authority shall prepare and provide to each member of the General Assembly the reports described in subsection (i) of this section, after which the General Assembly shall make the final and definitive decisions concerning the proposed project as set forth in subsection (j) of this section.

(b)(1) As the lead economic development agency for the State of Arkansas, the department may propose the use of Amendment 82 bonds to finance infrastructure and other needs in any combination in order to attract proposed projects to the State of Arkansas.

(2) In addition to powers conferred under other laws, the department may take any reasonable action necessary to carry out the purposes of Arkansas Constitution, Amendment 82, and this subchapter.

(3) The proposed use of Amendment 82 financing by the commission shall not prohibit the commission, the state, or any local entity from using any other available economic incentives in connection with a proposed project.

(c) The commission shall initiate the process of selecting a proposed project for referral to the General Assembly by performing an economic impact and cost-benefit analysis to evaluate the capability of a sponsor and the feasibility of a proposed project and to determine if the proposed project has the potential to be a qualified Amendment 82 project. The economic impact and cost-benefit analysis shall include all other economic incentives offered by the state in connection with the proposed project.

(d) If the commission determines that a proposed project has the potential to become a qualified Amendment 82 project, the commission shall refer the proposal and the commission's findings to the authority so that the authority may perform an initial assessment of the feasibility and impact of issuing Amendment 82 bonds in connection with the proposed project, including the state's ability to cover projected debt service obligations and the impact on the overall rating of the state's general obligation bonded indebtedness, including, without limitation,

bonds issued under Arkansas Constitution, Amendment 82, and this subchapter.

(e) If the authority's initial assessment is that Amendment 82 bond financing for the proposed project is feasible, the authority shall notify the department, and the department shall refer the proposal and the findings of the department and the authority to the Chief Fiscal Officer of the State for review of the impact of the proposed Amendment 82 bond financing on any agency or program supported from the gross general revenues under the Revenue Stabilization Law, § 19-5-101 et seq.

(f) If the Chief Fiscal Officer of the State's initial assessment is that the proposed Amendment 82 financing will not have a substantially negative impact on any agency or program supported from gross general revenues, then:

(1) The Chief Fiscal Officer of the State shall notify the commission; and

(2) The commission shall make a formal proposal to the sponsor detailing the state's proposed offer with respect to Amendment 82 financing and all other economic incentives offered by the state in connection with the proposed project.

(g)(1) If the sponsor of a proposed project determines to accept Amendment 82 financing, then the sponsor and the commission, on behalf of the state, shall sign a letter of commitment.

(2) The commission shall forward the letter of commitment and the findings and recommendations of the commission, the authority, and the Chief Fiscal Officer of the State to the Governor for review.

(3)(A) The commission shall also forward the letter of commitment, the findings and recommendations of the the department, the authority, and the Chief Fiscal Officer of the State, and all supporting documentation to the Office of Economic and Tax Policy of the Bureau of Legislative Research on behalf of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(B)(i) At the direction of the President Pro Tempore of the Senate or the Speaker of the House of Representatives, the office shall arrange for an independent confirmation of the economic impact and cost-benefit analysis performed by the commission or an independent economic impact and cost-benefit analysis of the proposed project to be completed within twenty (20) working days after the receipt of the letter of commitment.

(ii) All information forwarded to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by the commission and any resulting information related to the confirmation of the commission's economic impact and cost-benefit analysis or independent economic impact and cost-benefit analysis:

(a) Shall be considered working papers of the President Pro Tempore of the Senate and the Speaker of the House of Representatives under § 25-19-105(b)(7) and shall not be open to inspection and copying by any citizen of the State of Arkansas; and

(b) Is specifically exempt from the requirements of § 25-19-105(a).

(h) If the Governor determines that it is in the best interest of the state to pursue Amendment 82 financing for the proposed project, the Governor shall refer the proposed project to the General Assembly in regular session, fiscal session, or special session in order for the General Assembly to consider whether to approve the issuance of bonds under Arkansas Constitution, Amendment 82, and this subchapter.

(i)(1) In order to expedite review by the General Assembly, the commission and the authority shall prepare and provide to each member of the General Assembly the reports described in subdivisions (i)(2) and (3) of this section.

(2) The commission's report shall include:

(A) A description of the proposed project;

(B)(i) An itemization of the proposed infrastructure needs and other needs to be financed with the proceeds derived from the sale of Amendment 82 bonds.

(ii) The itemization shall include estimated costs and details to the maximum extent available at the time of the report;

(C) A description of all other economic incentives to be provided by the state in connection with the proposed project;

(D) A description of the economic impact and cost-benefit analyses of the proposed project for a period of at least ten (10) years that includes:

(i) The annual projected benefit to the state from increased sales and use tax and income tax revenue;

(ii) The annual projected cost to the state for each economic incentive offered to the sponsor in connection with the proposed project; and

(iii) The overall net present value benefit-to-cost ratio for a period of at least ten (10) years;

(E) The amount of bonds necessary to be issued to defray project costs and a budget of the project costs;

(F) A tentative time schedule setting forth the period of time during which the proceeds of the Amendment 82 bonds are to be expended;

(G) A certification by the Director of the Arkansas Economic Development Commission that under the terms of the letter of commitment, the proposed project shall consist of an investment in the state of not less than five hundred million dollars (\$500,000,000) and shall create no fewer than five hundred (500) new jobs;

(H) A copy of the signed letter of commitment for the proposed project; and

(I) A copy of the unexecuted Amendment 82 agreement for the proposed project.

(3) The authority's report shall include:

(A) A schedule of projected debt service, including all fees, showing the annual principal and interest requirements for any Amendment 82 bonds outstanding, if applicable, and the projected debt service for

the Amendment 82 bonds proposed to be issued for the proposed project;

(B) A projected schedule of revenues, if any, to be received by the state from the sponsor in connection with its use of the infrastructure needs and other needs associated with the proposed project;

(C) An initial plan of marketing for the bonds and a proposed schedule of issuance dates, including, without limitation, the number of series to be issued and an estimated timeline for the series based on the commission's proposed spending schedule; and

(D) A preliminary and estimated sources and uses table.

(j) If the General Assembly determines that the proposed project is of the nature intended by the electors of the state to be financed with Amendment 82 bonds and approves the Amendment 82 agreement, it shall take appropriate legislative action to:

(1) Declare the proposed project a qualified Amendment 82 project;

(2) Establish any additional parameters deemed necessary by the General Assembly for the general structure of the qualified Amendment 82 project, including, without limitation, penalty provisions;

(3) Authorize the execution of the Amendment 82 agreement in substantially the same form as presented to the General Assembly; and

(4) Authorize the issuance of Amendment 82 bonds.

History. Acts 2005, No. 1981, § 1; 2009, No. 962, § 31.

Publisher's Notes. The reference to "§ 1" was removed in (a)(1) following "Arkansas Constitution, Amendment 82." Former § 2 dealt with the effective date of the amendment.

Amendments. The 2009 amendment, in (h), inserted "session, fiscal session" preceding "or special session" and made a minor punctuation change.

15-4-3204. Amendment 82 agreement.

As soon as practicable after the General Assembly's approval of the issuance of bonds and before the Arkansas Development Finance Authority issues bonds, the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Director of the Arkansas Economic Development Commission, the President of the Arkansas Development Finance Authority, and the Chief Fiscal Officer of the State, all on behalf of the state, and the sponsor of the qualified Amendment 82 project shall execute the Amendment 82 agreement in substantially the same form as approved by the General Assembly.

History. Acts 2005, No. 1981, § 1.

15-4-3205. Penalties.

The sponsor shall be subject to specific penalties set forth in the Amendment 82 agreement and enacted in related legislation under § 15-4-3203(j) if the sponsor:

(1) Does not satisfy the minimum job creation and investment requirements specified in the Amendment 82 agreement within the time period specified in the Amendment 82 agreement;

(2) Does not maintain the job creation requirements specified in the Amendment 82 agreement for the period of time specified in the Amendment 82 agreement; or

(3) Fails to satisfy other terms of the Amendment 82 agreement.

History. Acts 2005, No. 1981, § 1.

15-4-3206. Compliance time period — Audit requirements.

(a) The Amendment 82 agreement shall specify a time period in which the sponsor must comply with the investment and job creation thresholds specified in the Amendment 82 agreement. Except as provided in subsection (b) of this section, the time period shall not exceed four (4) years from the date of enactment of related legislation under § 15-4-3203(j). In the event that the sponsor does not comply with the applicable time period, then the penalty provisions set forth in the Amendment 82 agreement and enacted in related legislation under § 15-4-3203(j) shall apply.

(b)(1) The sponsor may request a one-year extension of the time period specified in the Amendment 82 agreement by submitting to the Director of the Arkansas Economic Development Commission a written request with an explanation as to why the extension is necessary. The request shall be submitted at least ninety (90) days prior to the expiration of the time period specified in the Amendment 82 agreement.

(2) Upon receipt of a request to extend the applicable time period, the director shall immediately notify the President of the Arkansas Development Finance Authority, the Chief Fiscal Officer of the State, and the Governor. The director, the president, and the Chief Fiscal Officer of the State may approve a request for a one-year extension upon a determination that there is a valid economic reason for granting the extension.

(3) The sponsor shall not be granted more than three (3) one-year extensions of the applicable time period.

(c)(1) The sponsor shall maintain and make available records pertaining to investment and job creation requirements for annual audit by the Chief Fiscal Officer of the State and upon request no more often than annually by the Office of Economic and Tax Policy of the Bureau of Legislative Research or a person or entity retained by the office.

(2) The Arkansas Tax Procedure Act, § 26-18-101 et seq., shall apply to records maintained under this subsection and any audits conducted of the records, including any audit conducted through the office.

(3)(A) Records obtained or reviewed by the office under this section:

(i) Shall be considered working papers of the President Pro Tempore of the Senate and the Speaker of the House of Representatives under § 25-19-105(b)(7) and shall not be open to inspection and copying by any citizen of the State of Arkansas; and

(ii) Are specifically exempt from the requirements of § 25-19-105(a).

(B) However, a report of the audit shall be presented to the Legislative Council with respect to the status of the applicable qualified Amendment 82 project which details the sponsor's compliance with the provisions of the Amendment 82 agreement.

History. Acts 2005, No. 1981, § 1.

15-4-3207. Maximum ceiling on bond principal.

(a) In determining the maximum amount of Amendment 82 bonds that may be issued, the sum of the outstanding bonded indebtedness plus the principal amount of the proposed Amendment 82 bonds shall not exceed five percent (5%) of the net general revenues for the most recent fiscal year for which revenue calculations are available.

(b) It shall not be a violation of Arkansas Constitution, Amendment 82 or this subchapter or affect the validity of Amendment 82 bonds that were properly issued if:

(1) Net general revenues decline after Amendment 82 bonds are issued; and

(2) The outstanding bonded indebtedness exceeds five percent (5%) of the net general revenues for the most recent fiscal year for which revenue calculations are available.

(c) Amendment 82 bonds that when issued complied with the five-percent limitation may be refunded under Arkansas Constitution, Amendment 82 and this subchapter even if the outstanding bonded indebtedness before or after the refunding exceeds five percent (5%) of the net general revenues for the most recent fiscal year for which revenue calculations are available.

History. Acts 2005, No. 1981, § 1.

15-4-3208. Amendment 82 bonds.

(a) After the General Assembly's approval in regular session, fiscal session, or special session and the execution of the Amendment 82 agreement, the Arkansas Development Finance Authority, on behalf of the state, may issue bonds under Arkansas Constitution, Amendment 82, and this subchapter, to be known as "Amendment 82 Bonds" in one (1) or more series up to the maximum principal amount approved by the General Assembly.

(b)(1) Bonds shall be issued for the purpose of financing infrastructure needs and other needs to support a qualified Amendment 82 project.

(2) The proceeds of the Amendment 82 bonds shall be applied:

(A) To the payment of project costs and the costs and expenses of issuance of the Amendment 82 bonds; or

(B) In connection with a qualified Amendment 82 project refinancing, to the repayment of indebtedness incurred to pay project costs and the costs and expenses of issuance of the Amendment 82 bonds.

History. Acts 2005, No. 1981, § 1; in (a), inserted “session, fiscal session” preceding “or special session” and made a

Amendments. The 2009 amendment, minor punctuation change.

15-4-3209. Series of bonds.

(a) The bonds shall be issued, whether or not the interest on the bonds is subject to federal taxation, in series in amounts sufficient to finance or refinance all or any part of a qualified Amendment 82 project's costs, with the respective series to be designated by the year in which issued, and if more than one (1) series is to be issued in a particular year, by alphabetical designation.

(b) Each series of bonds shall have such date as the Arkansas Development Finance Authority shall determine and shall mature or be subject to mandatory sinking-fund redemption as determined by the authority over a period ending not later than thirty (30) years after the date of issuing the bonds of each series.

(c) Pending the issuance of bonds, the authority may issue temporary notes maturing not more than five (5) years after the date of issuance to be exchanged for or paid from the proceeds of bonds at such time as the bonds may be issued.

(d)(1) Each series of the bonds shall bear interest at the rate or rates accepted by the authority. The bonds may bear interest at either a fixed or variable rate or may be convertible from one (1) interest-rate mode to another.

(2) Interest shall be payable at such times as the authority shall determine, including the use of zero coupon or capital appreciation bonds.

(e) As determined by the authority, the bonds may:

(1) Be issued in the form of a bond registered as to principal and interest without coupons;

(2) Be in the denominations;

(3) Be made exchangeable for bonds of another form or denomination bearing the same rate of interest and date of maturity;

(4) Be made payable at the places within or without the state;

(5) Be made subject to redemption prior to maturity in the manner and for redemption prices; and

(6) Contain other terms and conditions.

(f) The bonds shall have all of the qualities of negotiable instruments or securities under the laws of this state, subject to the provision for registration of ownership.

History. Acts 2005, No. 1981, § 1.

15-4-3210. Authorization of bonds.

(a)(1) Prior to the issuance of any series of bonds, the Arkansas Development Finance Authority shall adopt a resolution authorizing the issuance of the bonds.

(2) Each resolution may contain terms, covenants, and conditions as deemed desirable, including, without limitation, those pertaining to:

(A) The establishment and maintenance of funds and accounts;

(B) The deposit and investment of revenues and of bond proceeds; and

(C) The rights and obligations of the state, its officers and officials, the authority, and the registered owners of the bonds.

(3)(A) The resolution of the authority may provide for the execution and delivery by the authority of a trust indenture or indentures, which may be a master trust indenture, series indenture, supplemental indenture, or any other form of indenture deemed necessary by the authority, with one (1) or more banks or trust companies located within or without the state, containing any of the terms, covenants, and conditions referred to in this subchapter or as otherwise authorized by law.

(B) The trust indenture or indentures shall be binding upon the state and its agencies, officers, and officials to the extent set forth in this subchapter or as otherwise authorized by law.

(b) Any resolution or trust indenture adopted or executed under this section shall provide that power is reserved:

(1) To apply to the payment of debt service on the bonds issued or secured under Arkansas Constitution, Amendment 82, and this subchapter all, any part, or none of the revenues that may be derived from any qualified Amendment 82 project financed by the bonds or financed by the authority in some other manner; and

(2) At the option of the authority and to the extent of the revenues that the authority elects to apply to debt service, to release from any requirement of the resolution or trust indenture other revenues and resources of the state.

(c) Any resolution or trust indenture adopted or executed under this section may provide for the retirement and defeasance of the bonds by the depositing of cash or investments in trust to be maintained for the purpose of retirement and defeasance of the bonds. When the provisions of the resolution or trust indenture are complied with, the bonds being defeased shall not be deemed to be outstanding bonded indebtedness for the purposes of this subchapter.

History. Acts 2005, No. 1981, § 1.

15-4-3211. Form and delivery of bonds.

(a) Each bond shall:

(1) Be signed with the manual or facsimile signatures of the Governor, the Chair of the Board of Directors of the Arkansas Development Finance Authority, and the Treasurer of State; and

(2) Have affixed, imprinted, or lithographed on the bond the Great Seal of the State of Arkansas.

(b) Delivery of the bonds shall be valid notwithstanding any change in persons holding such offices occurring after the bonds have been executed.

History. Acts 2005, No. 1981, § 1.

15-4-3212. Sale and price of bonds.

(a) The bonds may be sold in the manner, either at public or private sale, and upon terms determined by the Arkansas Development Finance Authority to be reasonable and expedient for effectuating the purposes of Arkansas Constitution, Amendment 82, and this subchapter.

(b) The bonds may be sold at the price the authority determines acceptable, including sale at a discount or a premium.

(c)(1) If the bonds are to be sold at public sale, the authority shall give notice of the offering of the bonds in a manner reasonably designed to notify participants in the public finance industry that the offering is being made.

(2) The authority shall set the terms and conditions of bidding, including the basis on which the winning bid will be selected.

(d) The authority may employ administrative agents, fiscal agents, underwriters, architects, accountants, engineers, and legal counsel and may pay them reasonable compensation from the proceeds of the bonds.

(e)(1) The authority may structure the sale of bonds using financing techniques recommended by its underwriters or other professional advisors in order to take advantage of market conditions and obtain the most favorable interest rates consistent with the purposes of Arkansas Constitution, Amendment 82, and this subchapter.

(2)(A) In furtherance of this authorization, the authority may enter into ancillary agreements in connection with the sale of the bonds as it deems necessary and advisable.

(B) Ancillary agreements may include, without limitation:

- (i) Bond purchase agreements;
- (ii) Remarketing agreements;
- (iii) Letters of credit; or
- (iv) Reimbursement agreements.

(3) The authority may also enter into interest rate exchange agreements or similar agreements or contracts with any person on a competitive or negotiated basis under terms or conditions determined by the authority, but in compliance with § 15-5-317.

(f) After funding any necessary reserve or reserves, the proceeds from the sale of the bonds may be used to pay:

- (1) The fees of any trustee or paying agent;
- (2) The costs of publication of notices;
- (3) The costs of printing the bonds;
- (4) The costs of publication and printing of official statements and other documents relating to the sale of the bonds;
- (5) The fees of any nationally recognized rating agency;

- (6) The fees of the issuer;
- (7) The fees of the guarantor;
- (8) Project costs; and
- (9) Other reasonable costs incurred by the authority for issuing and selling the bonds.

History. Acts 2005, No. 1981, § 1.

15-4-3213. Deposit of bond proceeds.

(a) The proceeds from the sale of the bonds, together with any revenues derived by the Arkansas Development Finance Authority from a qualified Amendment 82 project financed or refinanced under Arkansas Constitution, Amendment 82, and this subchapter, that are required to be so deposited under the resolution or trust indenture authorizing or securing the bonds shall be deposited by the recipient, as received, into trust funds in the name of the authority under the resolution or trust indenture authorizing or securing the bonds to accomplish the purposes of Arkansas Constitution, Amendment 82, and this subchapter in amounts or portions as set forth in the resolution or trust indenture authorizing or securing the bonds issued to finance or refinance the qualified Amendment 82 project.

(b)(1) The holder of the trust funds shall establish separate accounts and subaccounts within the applicable fund to correspond to the applicable series of bonds.

(2) In addition and under the resolution or trust indenture authorizing or securing the bonds, there may be created other funds, accounts, or subaccounts as the authority may determine to be necessary or desirable to accomplish the purposes of Arkansas Constitution, Amendment 82, and this subchapter.

(c) All procedures and methods for application of proceeds of any series of bonds to the financing or refinancing of project costs shall be:

(1) Developed in consultation with the Arkansas Economic Development Commission and the Chief Fiscal Officer of the State;

(2) Set forth in the resolution or trust indenture authorizing or securing the bonds; and

(3) Maintained as part of the records of the authority.

(d) The holder and administrator of funds composed, in whole or in part, of proceeds of bonds or disbursements from funds established under this subchapter shall be required by appropriate provision of the resolution or trust indenture authorizing or securing the bonds issued to audit funds no less frequently than annually and to assist the authority in preparing any report related to the bonds that may be required by this subchapter or other applicable federal or state law.

(e) The proceeds from the sale of the bonds, together with any revenues derived by the authority from any qualified Amendment 82 project financed or refinanced under Arkansas Constitution, Amendment 82, and this subchapter that are required to be so deposited under the resolution or trust indenture authorizing or securing the bonds and

any money held in any funds created under or authorized by Arkansas Constitution, Amendment 82, or this subchapter, may be invested and reinvested in accordance with the resolution or trust indenture authorizing or securing the bonds issued and shall be invested by the authority to the fullest extent practicable pending disbursement for the purposes intended in any of the following:

(1) Direct obligations of the United States, including obligations issued or held in book entry form on the books of the United States Department of the Treasury or obligations the principal of and interest on which are unconditionally guaranteed by the United States;

(2) Bonds, debentures, notes, or other evidences of indebtedness issued or guaranteed by any United States Government agency if the obligations are backed by the full faith and credit of the United States;

(3) Nonfull faith and credit senior debt obligations issued or guaranteed by United States Government agencies;

(4) Money market funds investing exclusively in the investments described in subdivisions (e)(1)-(3) of this section;

(5)(A) Certificates of deposit providing for deposits secured at all times by collateral described in subdivisions (e)(1)-(3) of this section.

(B) The certificates must be issued by commercial banks, deposits of which are insured by the Federal Deposit Insurance Corporation and collateral of which must be held by a third party.

(C) The holder of the trust funds must have a perfected first security interest in the collateral;

(6) Certificates of deposit, savings accounts, deposit accounts, or money market deposits, all of which are fully insured by the Federal Deposit Insurance Corporation;

(7) Bonds or notes issued by this state, any municipality, county, or school district in this state, or by any agency or instrumentality thereof;

(8) Investment agreements with financial institutions or insurance companies that are rated in one (1) of the two (2) highest rating categories of a nationally recognized rating agency;

(9) Repurchase agreements providing for the transfer of securities from a dealer bank or securities firm to the holder of the trust funds and the transfer of cash from the holder of the trust funds to the dealer bank or securities firm, with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the holder of the trust funds in exchange for the securities at a specified date. Repurchase agreements must satisfy the following criteria:

(A) Repurchase agreements must be between the holder of the trust funds and a dealer bank or securities firm described as follows:

(i) Dealers with at least one hundred million dollars (\$100,000,000) in capital; or

(ii) Banks whose deposits are insured by the Federal Deposit Insurance Corporation; and

(B) The written repurchase agreement contract must include the following:

(i) Securities that are acceptable for transfer are those listed in subdivisions (e)(1)-(3) of this section;

(ii) The term of the repurchase agreement may not exceed thirty (30) calendar days;

(iii) The collateral must be delivered to the holder of the trust funds, a trustee if a trustee is not supplying the collateral, or a third party acting as agent for the trustee if the trustee is supplying the collateral before or simultaneously with payment; and

(iv)(a) The securities must be valued weekly, marked-to-market at current market price plus accrued interest.

(b)(1) The value of collateral must be equal to one hundred three percent (103%) of the amount of cash transferred by the holder of the trust funds to the dealer bank or security firm under the repurchase agreement plus accrued interest.

(2) If the value of securities held as collateral declines below one hundred three percent (103%) of the value of the cash transferred by the holder of the trust funds, then additional cash or acceptable securities, or both, must be transferred and held by the holder of the trust funds; and

(10) Any other investment authorized by state law.

History. Acts 2005, No. 1981, § 1.

15-4-3214. General obligation bonds.

(a) The bonds shall be direct general obligations of the state for the payment of debt service on which the full faith and credit of the state are irrevocably pledged so long as any of the bonds are outstanding.

(b)(1) The bonds shall be payable from gross general revenues or special revenues, which shall be appropriated by the General Assembly for that purpose, and the amount of gross general revenues or, if applicable, special revenues as may be necessary are pledged to the payment of debt service on the bonds and shall be and remain pledged for those purposes.

(2) In addition, each authorizing resolution or trust indenture may pledge all, a portion, or none of the revenues generated by any qualified Amendment 82 project as additional security for the bonds.

History. Acts 2005, No. 1981, § 1.

15-4-3215. Annual determination of moneys required for bond repayment.

(a)(1) On or before commencement of each fiscal year, the Chief Fiscal Officer of the State shall determine the estimated amount required for payment of all or a part of the debt service on the outstanding bonded indebtedness during the fiscal year and deduct therefrom the estimated moneys to be available from special revenues or to the Arkansas Development Finance Authority from other sources related to the qualified Amendment 82 project to determine what amount of gross general revenues, if any, will be required.

(2) The Chief Fiscal Officer of the State shall certify the estimated amount to the Treasurer of State.

(3) The Treasurer of State shall then make monthly transfers from the State Apportionment Fund to the appropriate trust fund of the amount of gross general revenues or, if applicable, special revenues as shall be required to pay the maturing debt service on the outstanding bonded indebtedness.

(b)(1) The obligation to make monthly transfers of general revenues from the State Apportionment Fund to the appropriate trust fund shall constitute a first charge against the gross general revenues prior to all other uses to which the general revenues are devoted, either under present law or under any laws that may be enacted in the future.

(2) To the extent other general obligation bonds of the state may have been issued or may subsequently be issued, the bonds shall rank on a parity of security with respect to payment from general revenues.

(c) The resolution or trust indenture authorizing or securing the bonds issued shall identify the fund to which moneys shall be credited and used for the purposes identified in § 15-4-3208(b), and for those purposes, the holder of the trust funds is designated as the disbursing officer to administer those funds in accordance with Arkansas Constitution, Amendment 82, and this subchapter.

(d) Moneys held in trust funds in excess of the amount necessary to ensure the prompt payment of debt service on the bonds and the establishment and maintenance of reserve funds, if any, may be used for the redemption of bonds prior to maturity in the manner and in accordance with the provisions pertaining to redemption prior to maturity as set forth in the resolution or trust indenture authorizing or securing the bonds.

History. Acts 2005, No. 1981, § 1.

15-4-3216. Exemption from taxes.

(a) All bonds issued under Arkansas Constitution, Amendment 82, and this subchapter and interest on the bonds are exempt from all state and local taxes.

(b) The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of bank, fiduciary, insurance company, trust, and public funds.

History. Acts 2005, No. 1981, § 1.

15-4-3217. Refunding bonds.

(a) After bonds have been issued under Arkansas Constitution, Amendment 82, and this subchapter, the Arkansas Development Finance Authority may issue bonds for the purpose of refunding any outstanding bonds issued under Arkansas Constitution, Amendment 82, and this subchapter.

(b) The refunding bonds shall be general obligations of the state and shall be secured and sold in accordance with the provisions of this subchapter.

(c) The proceeds of the refunding bonds either may be applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement of the bonds being refunded as shall be specified by the authority in the resolution or trust indenture authorizing or securing the refunding bonds.

(d) The resolution or trust indenture under which the refunding bonds are issued may provide that any refunding bonds shall have the same security for payment as provided for the bonds being refunded. Other than approval of the resolution or trust indenture under which refunding bonds are issued by appropriate action of the authority, no additional action or approval for the issuance of refunding bonds shall be required to be taken by the General Assembly, the Arkansas Economic Development Commission, or the Chief Fiscal Officer of the State under this subchapter or as otherwise may be provided by other law.

History. Acts 2005, No. 1981, § 1.

15-4-3218. Contractual obligations of state — Enforcement.

(a) This subchapter shall constitute a contract between the state and the registered owners of all bonds issued under Arkansas Constitution, Amendment 82, and this subchapter that shall never be impaired, and any violation of its terms, whether under purported legislative authority or otherwise, shall be enjoined by the courts at the suit of any bondholder or any taxpayer.

(b)(1) In any suit for impairment or violation of contract with regard to bonds issued under Arkansas Constitution, Amendment 82, and this subchapter brought against the Arkansas Development Finance Authority, the Treasurer of State, or other appropriate agency, officer, or official of the state, the courts shall prevent a diversion of any revenues pledged and shall compel the restoration of diverted revenues by injunction or mandamus.

(2) Without limitation as to any other appropriate remedy at law or in equity, any bondholder, by an appropriate action, including, without limitation, injunction or mandamus, may compel the performance under this subchapter of all covenants and obligations of the state and its officers and officials.

History. Acts 2005, No. 1981, § 1.

15-4-3219. No rights until first series of bonds sold and delivered — Outstanding bonds unaffected.

(a) This subchapter shall not create any right of any character, and no right of any character shall arise under it unless and until the first series of bonds authorized by this subchapter are sold and delivered.

(b) The issuance of bonds authorized by this subchapter shall not impair or affect any outstanding bonds of the Arkansas Development Finance Authority issued under prior acts.

History. Acts 2005, No. 1981, § 1.

15-4-3220. Legal actions heard as preferred cause — Appeals.

Any case involving the validity of this subchapter or involving the bonds issued under Arkansas Constitution, Amendment 82, and this subchapter shall be deemed of public interest and shall be advanced by all courts and heard as a preferred cause, and all appeals from judgments or decrees rendered in the cases must be taken within thirty (30) calendar days after rendition of the judgment or decree.

History. Acts 2005, No. 1981, § 1.

15-4-3221. Monitoring and reporting.

(a) The Arkansas Economic Development Commission shall require audits of all accounts related to construction, operation, or maintenance of any qualified Amendment 82 project funded by this subchapter.

(b) The commission shall be responsible for monitoring and reporting to the Arkansas Development Finance Authority, the Governor, and the General Assembly on the ongoing economic impact of the project and the sponsor's progress in meeting economic development investment requirements under Arkansas Constitution, Amendment 82, and this subchapter.

(c) The commission and the authority, as applicable, shall require the sponsor to comply with all reporting and auditing requirements of the United States Securities and Exchange Commission or other state or federal regulatory agency that may have jurisdiction over the sponsor.

History. Acts 2005, No. 1981, § 1.

15-4-3222. Release of information.

(a)(1) Except as otherwise required to be disclosed under this subchapter, all information of the type identified in § 25-19-105(b)(9)(A) and related to a proposed project or a qualified Amendment 82 project that is provided to, compiled by or for, or developed by or for the Arkansas Economic Development Commission, the Arkansas Development Finance Authority, the Chief Fiscal Officer of the State, a local entity, the Governor, or the Office of Economic and Tax Policy of the Bureau of Legislative Research in furtherance of their powers, duties, and obligations under this subchapter is awarded the privileges and entitled to the exclusions set forth in subsection (b) of this section.

(2) Subdivision (a)(1) of this section shall not apply to information that is:

(A) Generated, compiled, or developed by a local entity that is not an agency or instrumentality of the state;

(B) Noncompetitive and nonproprietary; and

(C) Not provided to the commission under its powers, duties, and obligations set forth in this subchapter.

(b) The information described in subdivision (a)(1) of this section is not open to inspection and copying by any citizen of the State of Arkansas and is specifically exempt from the requirements of § 25-19-105(a) regardless of whether such information is in the custody of the commission, the authority, the Chief Fiscal Officer of the State, a local entity, or the Governor.

History. Acts 2005, No. 1981, § 1.

15-4-3223. Power and duties of the Arkansas Economic Development Commission and the Arkansas Development Finance Authority.

(a) In connection with their duties and powers under this subchapter, the Arkansas Economic Development Commission and the Arkansas Development Finance Authority, acting independently or jointly, shall have the following powers and duties, in addition to and not in replacement or limitation of powers conferred under other laws, to:

(1) Provide loans to a sponsor for payment of project costs;

(2) Develop or cause to be developed with proceeds of the Amendment 82 bonds, leases as lessee or lessor, in any manner acquire, own, hold, maintain, operate, sell, dispose of, exchange, mortgage, or lend, on behalf of the state, with respect to all or any part of any qualified Amendment 82 project;

(3) In any manner acquire, own, hold, use, exercise, sell, mortgage, pledge, hypothecate, or dispose of franchises, rights, privileges, licenses, rights-of-way, and easements that are necessary, useful, or appropriate for the exercise of the powers or implementation of the purposes set forth in Arkansas Constitution, Amendment 82, and this subchapter;

(4) Sell, convey, mortgage, pledge, lease as lessor, or otherwise dispose of all or any part of any qualified Amendment 82 project or other properties that it owns or leases, tangible or intangible, including, without limitation, franchises, rights, privileges, licenses, rights-of-way, and easements;

(5) Have and exercise the right of eminent domain for the purpose of acquiring lands, the fee title thereto, or any easement, right-of-way, or other interest or estate therein for a qualified Amendment 82 project, the infrastructure needs, or other needs therefor or portions thereof by the procedure now provided for condemnation by railroads in § 18-15-1201 et seq.;

(6) Make or accept gifts or grants of moneys, services, franchises, rights, privileges, licenses, rights-of-way, easements, or other property, real or personal or mixed;

(7) Enter into any contract necessary or convenient for the exercise of the powers or implementation of the purposes set forth in Arkansas Constitution, Amendment 82, and this subchapter;

(8) Fix, regulate, and collect rates, fees, rents, or other charges for the use of any properties or services furnished or delivered by the commission and the authority;

(9) Require audits or other periodic reports of any or all accounts related to construction, operation, or maintenance of any infrastructure or other needs funded by Arkansas Constitution, Amendment 82, and this subchapter;

(10) Take reasonable actions to ensure that debt service requirements are met; and

(11) Take such other action as may be appropriate to accomplish the purpose of Arkansas Constitution, Amendment 82, and this subchapter.

(b) The commission and the authority may promulgate rules with respect to their powers and duties under Arkansas Constitution, Amendment 82, and this subchapter.

(c) No member, officer, director, or employee of the commission or the authority shall be liable personally for any reason arising from the issuance of bonds under Arkansas Constitution, Amendment 82, and this subchapter unless the person acted with corrupt intent.

History. Acts 2005, No. 1981, § 1.

15-4-3224. Public reporting requirements.

(a) The reports delivered to the General Assembly under § 15-4-3203(i)(2) and (3) shall be available to the general public under the same policies and procedures that generally apply with respect to reports to the General Assembly.

(b)(1) During the term of an Amendment 82 agreement, the Arkansas Economic Development Commission shall provide a report to the Legislative Council no less frequently than annually with respect to the status of the applicable qualified Amendment 82 project which details the sponsor's compliance with the provisions of the Amendment 82 agreement.

(2) At a minimum, the commission's report shall address:

(A) A description of the infrastructure needs and other needs provided by the state under Arkansas Constitution, Amendment 82, and this subchapter and costs associated with each item;

(B) A description of how the sponsor has satisfied the investment and job creation requirements of the Amendment 82 agreement, including performance benchmarks and economic goals as specifically defined in the Amendment 82 agreement;

(C) The number of jobs created by each qualified Amendment 82 project and average hourly wages for each project;

(D) A description of the benefits package, including, without limitation, health and retirement benefits received by hourly employees;

(E) A comparison of the total number of new jobs and annual payroll by the sponsor pertaining to the qualified Amendment 82 project on the date the Amendment 82 agreement was executed and the end date of the calendar year before the filing of this report; and

(F) The application of any penalties for failure of the sponsor to satisfy its commitments under an Amendment 82 agreement.

(c) At the end of a ten-year period following the beginning of operation of the Amendment 82 project, the General Assembly may request a third party cost-benefit analysis to accurately determine the total project costs and the total benefits received by the state from the qualified Amendment 82 project.

(d) While Amendment 82 bonds are outstanding, the Arkansas Development Finance Authority shall provide a report to the Legislative Council, no less frequently than annually, with respect to the status of the Amendment 82 bonds. The report shall contain the information required by § 19-9-502.

(e) During the term of an Amendment 82 agreement, the Chief Fiscal Officer of the State shall provide a report to the Legislative Council, no less frequently than annually, with respect to the dates and costs of all economic incentives received by each qualified Amendment 82 project except as restricted by law.

History. Acts 2005, No. 1981, § 1.

SUBCHAPTER 33 — EQUITY INVESTMENT INCENTIVE ACT OF 2007

SECTION.

15-4-3301. Title.

15-4-3302. Equity investment incentives
— Creation — Purpose —
Tax credit.

15-4-3303. Eligibility for equity investment incentive.

SECTION.

15-4-3304. Application for an equity investment incentive tax credit.

15-4-3305. Award of an equity investment incentive tax credit.

15-4-3306. Rules.

Effective Dates. Acts 2007, No. 566, § 4: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the flow of development capital funds into and within the state continues to be insufficient to support the growth of businesses that will bring higher-paying jobs to inhabitants of the state; that as a result of the lack of available capital sources the state has suffered economic losses because of the inability to compete with other states in providing capital resources for high-wage businesses; that this legislation will stimulate the flow of private capital vital to the attraction, growth, and modernization of targeted

businesses and allow the coordination by state agencies of tax credits with other economic development tools; that unless such a program of tax credits is undertaken, the state will suffer further irreparable loss as a result of the continued inability to attract and support business development and from lost opportunities for economic expansion. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may

veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

15-4-3301. Title.

This subchapter shall be known and may be cited as the “Equity Investment Incentive Act of 2007”.

History. Acts 2007, No. 566, § 1.

15-4-3302. Equity investment incentives — Creation — Purpose — Tax credit.

(a) Equity investment incentives in the form of tax credits to persons or companies investing in certain types of eligible businesses are created.

(b) The equity investment incentives shall:

(1) Encourage capital investment in certain types of businesses including:

(A) Early-stage businesses and start-up businesses in this state;

(B) Businesses paying wages in excess of prevailing wages in the state or the county where the company is located; and

(C) Businesses that are invested in by venture capital funds and regional or community-based alliance funds; and

(2) Create new jobs.

(c)(1) An equity investment incentive tax credit is created that shall be equal to thirty-three and one-third percent (33 1/3%) of the approved amount invested by an investor in an eligible business, as identified in § 15-4-3303(a).

(2) The tax credit, if awarded, is available to the investor.

History. Acts 2007, No. 566, § 1.

15-4-3303. Eligibility for equity investment incentive.

(a) Eligibility for the equity investment incentive tax credit under this subchapter is limited to investments in:

(1) Targeted businesses as defined in § 15-4-2703(43); or

(2) Businesses that receive assistance in the form of equity investments from capital investment funds that target early-stage businesses and start-up businesses, if the business:

(A) Pays not less than one hundred fifty percent (150%) of the lesser of the county average wage or the state average wage; and

(B) Meets at least two (2) of the following conditions:

(i) The business is in one (1) of the business sectors set forth in § 15-4-2703(43)(A)(i)-(vi);

(ii) The business is identified in a local or regional economic development plan as the type of business targeted for recruitment or growth within the community or region;

(iii) The business is supported by a resolution of the city council or quorum court in the municipality or county in which the business is located or plans to locate;

(iv) The business is supported by business incubators certified under § 26-51-815(d);

(v) The business is supported by federal small business innovation research grants; or

(vi) The business is supported by technology development or seed capital investments made by instrumentalities of the state.

(b)(1) The award of the equity investment incentive tax credit to a qualified business under subsection (a) of this section shall be at the discretion of the Director of the Arkansas Economic Development Commission.

(2) Only cash investments shall qualify for the equity investment incentive tax credit under this subchapter.

(3) A business that seeks eligibility for an equity investment incentive tax credit under this subchapter shall sign an equity investment incentive agreement with the Arkansas Economic Development Commission.

History. Acts 2007, No. 566, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, §§ 1 and 7, provided:

“SECTION 1. Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, finan-

cial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

“SECTION 7. The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

15-4-3304. Application for an equity investment incentive tax credit.

(a) A business that seeks eligibility for an equity investment incentive tax credit under this subchapter shall file an application with the Arkansas Economic Development Commission.

(b) The application shall include:

(1) A business plan describing the proposed business for which an equity investment incentive tax credit is sought;

(2) A projection of the amount of capital being sought for the proposed business; and

(3) Other information requested by the Director of the Arkansas Economic Development Commission.

(c)(1) The commission shall gather information necessary to determine the eligibility of a business that seeks an equity investment incentive tax credit and process the application.

(2)(A) The commission shall share the application and all information concerning the business with the Arkansas Development Finance Authority and the Arkansas Science and Technology Authority.

(B) The Arkansas Science and Technology Authority shall decide whether an equity investment incentive shall be offered to the business.

(d)(1) If a business is notified of approval of an application for an equity investment incentive tax credit, the business shall sign an equity investment incentive agreement with the commission.

(2) After the equity investment incentive agreement has been signed by the business and the commission, the business may solicit investors and offer the equity investment incentive tax credit to the investors.

(e) For the equity investment tax credit to be awarded to an investor, the eligible business shall verify that all conditions to the award of an equity investment incentive tax credit stated in the equity investment incentive agreement have been met within the time set forth in the agreement.

History. Acts 2007, No. 566, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

“Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other neces-

sary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

15-4-3305. Award of an equity investment incentive tax credit.

(a) A person or company that purchases an equity interest in a qualified business under § 15-4-3303(a) in any of the calendar years 2007 — 2019 is entitled to a credit against any state income tax liability

that may be imposed on the person or company for any tax year commencing on or after the date of the purchase.

(b) The credit against state income tax liability shall be determined in the following manner:

(1) The credit shall not exceed thirty-three and one-third percent (33 1/3%) of the actual purchase price paid for the equity interest to the business, less any fees or commissions to underwriters or sales agents paid by the business;

(2) In any one (1) tax year, the credit allowed by this section shall not exceed fifty percent (50%) of the net Arkansas state income tax liability or premium tax liability of the taxpayer after all other credits and reductions in tax have been calculated;

(3)(A) Any credit in excess of the amount allowed by subdivision (b)(2) of this section for any one (1) tax year may be carried forward and applied against Arkansas state income tax for the next-succeeding tax year and annually thereafter for a total period of nine (9) years next succeeding the year in which the equity interest in a business was purchased, subject to the provisions of subdivision (b)(2) of this section or until the credit is exhausted, whichever occurs first.

(B) In no event may the credit allowed by this section be allowed for any tax year ending after December 31, 2028; and

(4) An original purchaser of equity interests who seeks to qualify for the income tax credit or premium tax credit provided in this section shall obtain and attach to the income tax return or premium tax return for the years the credit is claimed a certified statement from the business stating:

(A) The name and address of the original purchaser;

(B) The tax identification number of the person entitled to the credit;

(C) The original date of purchase of the equity interest;

(D) The number and type of equity interests purchased;

(E) The amount paid by the original purchaser for the equity interest;

(F) The amount of the tax credit associated with the purchase of the equity interest; and

(G) The amount of dividends and distributions previously paid by the business to the purchaser.

(c)(1) A transferee from an original purchaser is entitled to the tax credit described in this section only to the extent the credit is still available to and has not previously been used by the transferor.

(2) A transferee of equity interests or tax credits who seeks to qualify for the income tax credit or premium tax credit provided in this section shall obtain and attach to the income tax return or premium tax return for the years the credit is claimed a certified statement from the business stating:

(A) The name and address of the original purchaser and all transferees;

(B) The tax identification number of all persons entitled to any portion of the original tax credit;

- (C) The original date the equity interest was purchased;
- (D) The number and type of equity interests purchased;
- (E) The amount paid by the original purchaser for the equity interest;
- (F) The amount of the tax credit associated with the purchase of the equity interest;
- (G) The amount of the tax credit associated with the original purchase used by all previous owners of the equity interest or tax credit and the remaining amount of the tax credit available for use by the transferee; and
- (H) The amount of dividends and distributions previously paid by the business to the original purchaser and all transferees.

(d)(1) If the owner of an equity interest in or a tax credit issued by a company is a pass-through entity for tax purposes, such as a limited liability company or a partnership, then the owner of the pass-through entity is entitled to the tax credit described in this section.

(2) If a pass-through entity entitled to a tax credit under subdivision (d)(1) of this section is owned by two (2) or more persons, then the tax credit may be allocated among the pass-through entity owners in the method selected by the owners as described in the governing documents of the pass-through entity or by other written agreement among the owners.

(e)(1) For the purpose of ascertaining the gain or loss from the sale or other disposition of an equity interest in a business, the owner of the equity interest shall reduce the owner's basis in the equity interest by the amount of the tax credits previously deducted under this section.

(2) However, sale or other disposition under subdivision (e)(1) of this section does not include a transfer from the holder of an equity interest to the business in liquidation of the equity interest.

(3) This reduced basis shall be used by the original purchaser or transferee when calculating tax due under the Income Tax Act of 1929, § 26-51-101 et seq.

(f) The total cumulative amount of tax credits available to all purchasers of equity interest in qualified businesses under this section and under § 15-4-1026 in any calendar year shall not exceed six million two hundred fifty thousand dollars (\$6,250,000).

History. Acts 2007, No. 566, § 1; 2009, No. 481, §§ 2, 3.

Amendments. The 2009 amendment,

in (a), inserted "or company" twice; and made minor stylistic changes in (a) and (e)(1).

15-4-3306. Rules.

The Arkansas Economic Development Commission shall promulgate guidelines and rules to implement this subchapter.

History. Acts 2007, No. 566, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

"Department of Economic Development

renamed Arkansas Economic Development Commission.

"(a)(1) The Department of Economic Development, as it is referred to or em-

powered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

CHAPTER 5

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

SUBCHAPTER.

1. ARKANSAS DEVELOPMENT FINANCE AUTHORITY ACT — GENERAL PROVISIONS.
2. ARKANSAS DEVELOPMENT FINANCE AUTHORITY ACT — ADMINISTRATION.
3. ARKANSAS DEVELOPMENT FINANCE AUTHORITY ACT — BONDS.
4. ARKANSAS DEVELOPMENT FINANCE AUTHORITY BOND GUARANTY ACT OF 1985.
5. ARKANSAS PRIVATE ACTIVITY BOND ALLOCATION ACT OF 1985. [REPEALED.]
6. ALLOCATION OF STATE CEILING.
7. ARKANSAS DEVELOPMENT FINANCE AUTHORITY SMALL BUSINESS ACT OF 1989.
8. RURAL AND AGRICULTURAL DEVELOPMENT.
9. CONSTRUCTION ASSISTANCE REVOLVING LOANS.
10. WATER RESOURCES AND WASTE DISPOSAL REVOLVING LOAN FUND. [REPEALED.]
11. ARKANSAS CAPITAL ACCESS PROGRAM FOR SMALL BUSINESS ACT OF 1993.
12. PETROLEUM STORAGE TANK TRUST FUND BOND FINANCING ACT.
13. AFFORDABLE NEIGHBORHOOD HOUSING TAX CREDIT ACT OF 1997.
14. VENTURE CAPITAL INVESTMENT ACT OF 2001.
15. ARKANSAS BROWNFIELD REVOLVING LOAN FUND ACT.
16. ARKANSAS RISK CAPITAL MATCHING FUND ACT OF 2007.
17. ARKANSAS HOUSING TRUST FUND ACT OF 2009.

SUBCHAPTER 1 — ARKANSAS DEVELOPMENT FINANCE AUTHORITY ACT —

GENERAL PROVISIONS

SECTION.

- 15-5-101. Title.
- 15-5-102. Legislative findings and declaration of public necessity.
- 15-5-103. Definitions.

SECTION.

- 15-5-104. Construction.
- 15-5-105. Subchapters supplemental.
- 15-5-106. Bonds.

Effective Dates. Acts 1985, No. 1062, § 28.00: May 1, 1985. Emergency clause provided: “It is hereby found and declared that there is an immediate and urgent need for providing more readily available financing for the alleviation of unemployment, the retention of existing employment and the providing of additional employment in all phases of agricultural, business and industrial enterprises, to

eliminate the shortage of decent, safe, sanitary and affordable housing for elderly persons and families of low and moderate income; to assure the development of health care facilities, for capital improvement facilities and for educational facilities for the benefit of educational institutions within the State; that the continuation of these conditions is inimical to the health, safety, public morals, welfare and economic security of the inhabitants of this State; and that these conditions can be remedied or alleviated through the creation of the Arkansas Development Finance Authority and the issuance of Bonds for the public purposes as provided herein. This Act is immediately necessary in order that such financing can be accomplished and the resulting public benefits realized. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after May 1, 1985."

Acts 1987, No. 780, § 3: Apr. 7, 1987. Emergency clause provided: "It having been found that the production of motion pictures and like products offers significant and immediate opportunities for industrial development and employment in Arkansas, an emergency is declared and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval."

Acts 1987, No. 900, § 10: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly (1) that there is an urgent need to provide financial assistance to Arkansas educational institutions and that the Arkansas Development Finance Authority possesses the expertise and resources to provide such assistance; (2) that the power to create nonprofit corporations will greatly assist the Arkansas Development Finance Authority in carrying out its duties under this Act; (3) that there is an urgent need to modify the prior notification and other requirements of Section 6.02 of Act 1062 of 1985, as amended, in order that the Arkansas Development Finance Authority may, when necessary, move expeditiously to take advantage of favorable credit conditions in issuing bonds to provide pooled or consolidated financings for certain projects and activi-

ties; and (4) in certain cases, the Arkansas Development Finance Authority may benefit by issuing bonds denominated in currencies other than the currency of the United States of America. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 836, § 8: Mar. 22, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly that the financing of working capital is critical to the economic well-being of health care facilities and to the continued provision of health services for the public health and welfare. Affordable financing of working capital may require the participation of many health care facilities, not limited to those within the State. The legislature finds and declares that the responsibility of the State as outlined above cannot be effectively met without a program for financing working capital of health care facilities throughout the nation as provided for in this article, which is determined to be an essential governmental function and for a public purpose. Therefore, an emergency is hereby declared to exist and the act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1117, § 5: Apr. 10, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the authority of the Arkansas Development Finance Authority to finance operations in addition to facilities for the purpose of promoting agricultural and business enterprises should be made explicit, and that the provision of labor and services deemed necessary or desirable for programs which will promote and develop agricultural business or industrial enterprises, such as a boll weevil eradication program, will be of immediate benefit to the economic development of this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1791, § 13: Apr. 19, 2001. Emergency clause provided: "It is found and determined by the Eighty-Third General Assembly that there is an urgent need to provide additional economic development capital to promote the continued expansion of industry within the state by providing funds for economic growth. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 494, § 5: Mar. 18, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law does not specifically provide the terms and conditions under which the Arkansas Development Finance Authority may enter into an interest rate exchange agreement or similar agreement or contract; that there is an urgent need to authorize the Arkansas Development Finance Authority to enter into interest rate exchange agreements or similar agree-

ments or contracts to allow it to take advantage of innovative financing structures; that, by entering into these agreements, the Arkansas Development Finance Authority will be able to more effectively assist Arkansas residents in retaining existing employment and reducing unemployment in all phases of agricultural business and industrial enterprises, in eliminating the shortage of safe and affordable housing, in developing reliable, affordable, efficient, and environmentally compatible sources of energy for all types of public and private consumption; and that this act is immediately necessary because the financial marketplace is very volatile, and immediate enactment will allow the Arkansas Development Finance Authority to take advantage of current, favorable market trends in order to compete with other financial market participants. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

CASE NOTES

Purpose.

The Arkansas Development Finance Authority Act was enacted for the purposes of providing a source of public financing for capital improvements such as

hospitals, schools, and housing for the elderly and for citizens of lower income. *Meadows of W. Memphis v. City of W. Memphis*, 800 F.2d 212 (8th Cir. 1986).

15-5-101. Title.

This subchapter, §§ 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316 shall be referred to as and may be cited as the "Arkansas Development Finance Authority Act".

History. Acts 1985, No. 1062, § 1.00; A.S.A. 1947, § 13-2901.

15-5-102. Legislative findings and declaration of public necessity.

(a) The General Assembly finds:

(1)(A) That there exists severe economic instability in traditional national and international markets for goods and services produced by the citizens of the State of Arkansas.

(B) This instability has caused serious economic distress among the citizens of our state and is manifest in:

(i) The increasing number of business failures and bankruptcies, both personal and corporate, and the extraordinarily high levels of unemployment in agricultural business and industrial enterprises; and

(ii) The rapidly rising costs of housing for elderly persons and families of low and moderate income;

(2) That the continued existence of these conditions is inimical to the public health, welfare, safety, morals, and economic security of the citizens and inhabitants of the state; and

(3) That the economic well-being of the citizens of the State of Arkansas will be enhanced by the providing of:

(A) Economical health care facilities for the benefit of its citizens;

(B) Educational facilities of every nature and kind;

(C) Capital improvement facilities for its citizens; and

(D) Financial assistance to political subdivisions of the state.

(b) For the reasons set out in subsection (a) of this section, the General Assembly finds that there exists in the state an immediate and urgent need to provide the means and methods for providing financing:

(1) To complement Arkansas' private financial institutions to better serve their customers in ways which contribute to a strengthened and diversified Arkansas economy and which do not compete with Arkansas' private financial institutions;

(2) To restore and revitalize existing agricultural business and industrial enterprises for the purpose of retaining existing employment within the state;

(3) To promote and develop the expansion of existing and the establishment of new agricultural business and industrial enterprises for the purpose of further alleviating unemployment within the state and for providing additional employment;

(4) To promote and target resources of the state to further the development of export trade of Arkansas products for the purpose of the economic development of the state and for providing additional employment therefrom;

(5) To eliminate the shortage of decent, safe, sanitary, and affordable residential housing for elderly persons and families of low and moderate income in the state;

(6) To assure the development of reliable, affordable, efficient, and environmentally compatible sources of energy for all types of public and private consumption;

(7) To provide health care facilities for the citizens and inhabitants of the state;

(8) To provide capital improvement facilities for the benefit of the citizens and inhabitants of the state;

(9) To provide educational facilities for educational institutions within the state and to enhance the Public School Fund;

(10) To provide for short-term advance funding of the obligations of local governments throughout the state; and

(11) To assist minority businesses in obtaining loans or other means of financial assistance.

(c) It is declared to be the public policy and responsibility of this state to promote the health, welfare, safety, morals, and economic security of its inhabitants through the retention of existing employment and alleviation of unemployment in all phases of agricultural business and industrial enterprises, the elimination of the shortage of decent, safe, sanitary, and affordable housing for elderly persons and persons of low and moderate income, for the development of reliable, affordable, efficient, and environmentally compatible sources of energy for all types of public and private consumption, for health care facilities, for capital improvement facilities, and for educational facilities for the benefit of educational institutions within the state.

(d) The General Assembly finds that the public policies and responsibilities of the state as set forth in this section cannot be fully attained without the use of public financing and that such public financing can best be provided by the creation of a state development finance authority with comprehensive and extensive powers therein. The authority shall have the power to issue revenue bonds to provide financing for qualified agricultural businesses and industrial enterprises, residential housing, energy enterprises and facilities, health care facilities, capital improvement facilities, and educational facilities, and that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, and granted.

History. Acts 1985, No. 1062, § 2.00; A.S.A. 1947, § 13-2902; Acts 1987, No. 900, § 1.

Publisher's Notes. Acts 1987, No. 900, § 9, provided: "It is the intention of this act to amend such portions of Acts 1985,

No. 1062, as amended, as are specifically mentioned in this act; the remainder of Acts 1985, No. 1062 shall remain in full force and effect as enacted until it shall be further amended or repealed."

15-5-103. Definitions.

As used in this subchapter, §§ 15-5-201 — 15-5-211, 15-5-213, 15-5-301 — 15-5-316, § 15-5-401 et seq., and § 15-5-701 et seq.:

(1) "Aggregate security value of the contract" means the amount determined by the party identified in and in the manner identified in an interest rate exchange agreement or similar agreement or contract that a proposed assignee would pay in United States currency to the Arkansas Development Finance Authority to assume the obligations of

the authority under the interest rate exchange agreement or similar agreement or contract;

(2) "Agricultural business enterprises" means facilities and operations supporting farms, ranches, and other agricultural or silvicultural commodity producers, such as aquaculture, fish hatchery operations and fish farms, and related businesses and industries, including, but not limited to, grain elevators, shipping heads, livestock pens, warehouses and other storage facilities, related transportation facilities, drainage facilities, and any related facilities and operations thereto;

(3) "Authority" means the Arkansas Development Finance Authority created by § 15-5-201;

(4) "Board of directors" means the Board of Directors of the Arkansas Development Finance Authority created in § 15-5-202;

(5) "Bonds" means any bonds, notes, debentures, interim certificates, grant and revenue anticipation notes, commercial paper or other notes with maturities of one (1) year or less, interest in a lease, and lease certificates of participation or other evidences of indebtedness, whether or not the interest on them is subject to federal income taxation, issued by the authority;

(6) "Capital improvements" means, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means:

(A) Any physical public betterment or improvement or any preliminary plans, studies, or surveys relative thereto;

(B) Land or rights in land, including without limitations leases, air rights, easements, rights-of-way, or licenses; and

(C) Any furnishings, machinery, vehicles, apparatus, or equipment for any public betterment or improvement, which shall include without limiting the generality of the foregoing definition the following:

(i) Any and all facilities for state agencies, city or town halls, courthouses, and other administrative, executive, or public offices;

(ii) Court facilities;

(iii) Jails;

(iv) Firefighting facilities and apparatus;

(v) Parking garages or other facilities;

(vi) Educational and training facilities for public employees;

(vii) Auditoriums, stadiums, convention halls, and similar public meeting or entertainment facilities;

(viii) Civil defense facilities;

(ix) Air and water pollution control facilities;

(x) Drainage and flood control facilities;

(xi) Storm sewers;

(xii) Arts and crafts centers;

(xiii) Museums;

(xiv) Libraries;

(xv) Public parks, playgrounds, or other public open space;

(xvi) Marinas;

(xvii) Swimming pools, tennis courts, golf courses, camping facilities, gymnasiums, and other recreational facilities;

(xviii) Tourist information and assistance centers;

(xix) Historical, cultural, natural, or folklore sites;

(xx) Fair and exhibition facilities;

(xxi) Streets and street lighting, alleys, sidewalks, roads, bridges, and viaducts;

(xxii) Airports, passenger or freight terminals, hangars, and related facilities;

(xxiii) Barge terminals, ports, harbors, ferries, wharves, docks, and similar marine services;

(xxiv) Slack water harbors, water resource facilities, waterfront development facilities, and navigation facilities;

(xxv) Public transportation facilities;

(xxvi) Public water systems and related transmission and distribution facilities, storage facilities, wells, impounding reservoirs, treatment plants, lakes, dams, watercourses, and water rights;

(xxvii) Sewage collection systems and treatment plants;

(xxviii) Maintenance and storage buildings and facilities;

(xxix) Police and sheriffs' stations, apparatus, and training facilities;

(xxx) Incinerators;

(xxxi) Garbage and solid waste disposal and compacting and recycling facilities of every kind; and

(xxxii) Social and rehabilitative facilities;

(7) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and if the latter, by negotiation or bidding upon such terms and pursuant to such advertising as the authority shall determine to be in the public interest and necessary under the circumstances existing at the time to accomplish the purposes of and authority set forth in this subchapter;

(8) "Counterparty" means the party entering into the interest rate exchange agreement or similar agreement or contract with the authority;

(9) "Educational facilities" means real, personal, and mixed property of any and every kind intended by an educational institution in furtherance of its educational program, including, but not limited to, dormitories, classrooms, laboratories, athletic fields, administrative buildings, equipment, and other property for use therein or thereon;

(10) "Facilities" means any real property, personal property, or mixed property of every kind, including, without limiting the generality of the foregoing, rights-of-way, roads, streets, pipes, pipelines, reservoirs, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, instrumentalities, and other real, personal, or mixed property of every kind or any preliminary studies and surveys relative thereto;

(11) "Health care facilities" means facilities for furnishing physical or mental health care, including, without limitation:

(A) Hospitals, other facilities for the diagnosis and treatment of any illness or disease, offices and clinics of doctors of medicine,

dentists, optometrists, podiatrists, chiropractors, and related facilities, and nursing homes and related facilities;

(B) Long-term care or life-care facilities for the elderly or disabled, including facilities used to furnish emergency medical health care and emergency medical services, including, but not limited to, ambulances or vehicles specifically designed, equipped, and licensed for transporting the sick or injured;

(C) Laboratories and other facilities for conducting health care-related research, including buildings and other facilities to support and sustain these activities;

(D) Equipment of every nature and kind related to health care, whether for diagnostic purposes, medical treatment, or research;

(E) Emergency medical equipment and supplies;

(F) Dispatching or other communication systems;

(G) Computers for billing, collections, and system design and control;

(H) Training and administrative facilities; and

(I) Health care project costs as defined in subdivision (12) of this section;

(12)(A)(i) "Health care project costs" specifically includes the refinancing of any existing debt of a health care facility necessary in order to permit the health care facility to borrow from the authority and give adequate security for the health care facility loan.

(ii) The determination of the authority with respect to the necessity of refinancing and adequate security for a health care facility loan is conclusive.

(B)(i) "Health care project costs" also includes the financing of working capital.

(ii) However, any health care facility loan to a health care facility located outside the state to finance working capital shall be made only if necessary to a program of working capital financing, including a health care facility loan to a health care facility located within the state.

(C) The determination of the authority with respect to the necessity of these health care facility loans to health care facilities located outside the state is conclusive.

(D) POOLED OR CONSOLIDATED FINANCINGS OF A NUMBER OF LOANS FOR HEALTH CARE FACILITIES.

(i) The authority may make loans for health care facilities located outside the state, provided:

(a) Loans under the same pooled or consolidated financing program are made under similar terms to health care facilities located within the state; and

(b) The authority's fees or charges, after deducting all appropriate expenses for providing the aggregated or pooled financings of health care facilities, are primarily dedicated to furthering the delivery of health care within the state.

(ii) The determination of the authority with respect to the necessity and appropriateness of the health care facility loans to health care facilities located either within or outside the state is conclusive.

(iii) The General Assembly declares that the authority acting as authorized under this section in making health care loans under the terms hereof is within the legislative findings and declaration of public necessity as set forth in § 15-5-102(b)(7).

(iv) Bonds issued by the authority under this subdivision (12)(D) shall not be exempt from taxes of the State of Arkansas;

(13)(A) "Housing development" means any work or undertaking, whether new construction or rehabilitation, that is designed and financed pursuant to the provisions of this subchapter for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for elderly persons and families of low or moderate income in need of housing.

(B) Such an undertaking may include any buildings, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable appurtenances, such as, but not limited to, site preparation, landscaping, and other nonhousing facilities such as community and recreational facilities as the authority determines to be necessary, convenient, or desirable appurtenances, retirement homes, centers, and related facilities, nursing homes and related facilities, and long-term care or life-care facilities for the elderly or disabled;

(14)(A) "Industrial enterprise" means, but is not limited to, facilities and operations for manufacturing, producing, processing, assembling, repairing, extracting, warehousing, distributing, communications, computer services, the production of motion pictures and like products, technology-based enterprises, tourism enterprises, transportation, corporate and management offices, and services provided in connection with any of the foregoing, in isolation or in any combination, that involve the creation of new or additional employment or the retention of existing employment, and industrial parks.

(B) However, a shopping center, retail store or shop, or other similar undertaking that is solely or predominantly of a commercial retail nature shall not be an industrial enterprise for the purposes of this subchapter;

(15) "Interest rate exchange agreement or similar agreement or contract" means a written contract entered into by the authority with one (1) or more counterparties that:

(A) Is related to the issuance of bonds by the authority or to bonds previously issued by the authority that are outstanding on the date of execution of the contract;

(B) Provides for an exchange of payments, denominated in United States currency, that is based upon fixed or variable interest rates; and

(C) Includes contracts and options related to any exchange of payments as determined by the authority under its rulemaking authority under § 15-5-317;

(16) "Loans" means loans made for the purposes of financing any of the activities authorized within this subchapter, including:

(A) Working capital, the acquisition of accounts as defined in § 4-9-106, to finance working capital;

(B) Loans made to financial institutions for the purpose of funding or as security for loans made for the purpose of accomplishing any of the purposes of this subdivision (16);

(C) Loans made to nonprofit corporations and affiliated organizations for the purpose of such entities' providing funds and loans for health care project costs as defined in this section; and

(D) Reserves and expenses appropriate or incidental to all such loans described in this subdivision (16);

(17) "Operations" means any and all matters deemed necessary or desirable to the promotion of agricultural business and industrial enterprises, including, but not limited to, the provision of labor and services of any nature and all transactions pertaining to receivables, accounts, inventory, loans, lines of credit, and working capital, designed to promote, restore, revitalize, or develop existing agricultural business or industrial enterprises, or the establishment of new agricultural business or industrial enterprises;

(18) "Political subdivision" means a city of the first class, a city of the second class, an incorporated town, a county, or an improvement district, or any agency, board, commission, public corporation, or instrumentality of the above;

(19) "Scientific and technical services business" means a business:

(A) Primarily engaged in performing scientific and technical activities for others, including:

(i) Architectural and engineering design;

(ii) Computer programming and computer systems design; and

(iii) Scientific research and development in physical, biological, and engineering sciences;

(B) Selling expertise;

(C) Having production processes that are almost wholly dependent upon worker skills;

(D) Deriving at least seventy-five percent (75%) of its revenue from out-of-state sales; and

(E) Paying average hourly wages that exceed one hundred fifty percent (150%) of the county or state average wage, whichever is less;

(20) "Short-term advance funding" means the financing of temporary cash shortfalls of local governments based on the local government's projected monthly incomes and expenditures and its surplus at the beginning of each fiscal year, and the shortfall is the result of the local government's projected income's being insufficient to meet the needs of its estimated expenditures, even though the aggregate income will exceed the aggregate expenditures for the fiscal year;

(21) "State" means the State of Arkansas;

(22) "State agency" means any office, department, board, commission, bureau, division, public corporation, agency, or instrumentality of this state;

(23) "Technology-based enterprises" means:

(A)(i) A grouping of growing business sectors, identified as targeted businesses, that includes the following:

- (a) Advanced materials and manufacturing systems;
- (b) Agriculture, food, and environmental sciences;
- (c) Biotechnology, bioengineering, and life sciences;
- (d) Information technology;
- (e) Transportation logistics; and
- (f) Bio-based products.

(ii) In order to receive benefits as a targeted business, the business must pay not less than one hundred fifty percent (150%) of the lesser of the county or state average wage;

(B) A scientific and technical services business; or

(C) A corporation, partnership, limited liability company, sole proprietorship, or other legal entity whose primary business directly involves commercializing the results of research conducted in one (1) of the six (6) growing business sectors identified as targeted businesses; and

(24) "Tourism enterprise" means:

(A) Cultural and historic sites, recreational and entertainment facilities, areas of natural phenomena or scenic beauty, theme parks, amusement or entertainment parks, indoor or outdoor theatrical productions, botanical gardens, and cultural or educational centers; and

(B) Lodging facilities that are an integrated part of any of the enterprises listed in this subdivision (24).

History. Acts 1985, No. 1062, § 3.00; A.S.A. 1947, § 13-2903; Acts 1987, No. 780, § 1; 1989, No. 836, §§ 1-3; 1995, No. 1117, § 1; 1999, No. 429, §§ 1, 2; 2001, No. 1734, §§ 1-3; 2001, No. 1791, § 10; 2003, No. 494, § 1; 2005, No. 1232, § 6.

Publisher's Notes. Acts 2005, No. 1232, § 1, provided: "Legislative intent.

"(a) Accelerate Arkansas, a statewide group of volunteers whose mission is to foster economic growth in Arkansas by raising the average Arkansas wage to the level of the national average wage by using the essential building blocks of the knowledge-based economy to create an environment supporting entrepreneurship and continuous innovation, developed its five-point strategy to increase per capita income:

"(1) Support research and development that creates jobs;

"(2) Provide incentives that make risk capital available in the funding gap;

"(3) Encourage entrepreneurship and new enterprise development;

"(4) Sustain successful existing companies; and

"(5) Increase achievement in science, technology, engineering, and mathematics education.

"(b) These core strategies focus on the economic building blocks of research, entrepreneurship, risk capital, and the science and engineering workforce.

"(c) These core strategies are consistent with and supported by the findings in:

"(1) The Department of Economic Development's Report of the Task Force for the Creation of Knowledge-Based Jobs;

"(2) The Winthrop Rockefeller Foundation's Entrepreneurial Arkansas: Connecting the Dots; and

"(3) 'Arkansas' Position in the Knowledge-Based Economy', a report prepared by the Milken Institute and the Center for Business and Economic Research at the University of Arkansas."

Amendments. The 2005 amendment, in (14)(A), inserted "but is not limited to" and "technology-based enterprises"; inserted present (19) and (23); and redesi-

nated the remaining subdivisions accordingly.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Natural Resources, 24 U. Ark. Little Rock L. Rev. 513.

Survey of Legislation, 2003 Arkansas General Assembly, Natural Resources, Development Finance Authority, 26 U. Ark. Little Rock L. Rev. 439.

15-5-104. Construction.

(a) This subchapter and §§ 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316 shall be liberally construed.

(b) Nothing contained in this subchapter and §§ 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316 shall be construed as a restriction or limitation upon any powers which the authority might otherwise have under any other law of this state, and the provisions of this subchapter and §§ 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316 are cumulative to such powers. The provisions of this subchapter and §§ 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316 shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized and shall be regarded as supplemental and additional to powers conferred by any other laws.

(c) The issuance of bonds under the provisions of this subchapter and §§ 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316 need not comply with the requirements of any other state laws applicable to the issuance of bonds, notes, and other obligations, and it shall not be necessary to comply with general provisions of other laws dealing with public facilities, their acquisition, construction, leasing, encumbering, or disposition.

(d) No proceedings, notice, or approval shall be required for the issuance of any bonds or any instrument or the security therefor except as provided for in this subchapter and §§ 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316.

History. Acts 1985, No. 1062, § 21.00; A.S.A. 1947, § 13-2921.

15-5-105. Subchapters supplemental.

(a) Except as stated in § 15-5-303, it is the specific intent of this subchapter and §§ 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316 that the provisions hereof are supplemental to other constitutional and statutory provisions now existing or hereafter adopted which may provide for enhancing the Public School Fund or the financing of agricultural business enterprises, capital improvements, educational facilities, health care facilities, housing development, industrial enterprises, or short-term advance funding of local government obligations.

(b) Nothing contained in this subchapter and §§ 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316 shall be deemed to be a restriction or limitation upon alternative means of financing previously available or hereafter made available to municipalities or counties for the purposes set forth in this subchapter and §§ 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316.

History. Acts 1985, No. 1062, § 25.00; A.S.A. 1947, § 13-2923; Acts 1987, No. 900, § 7.

Publisher’s Notes. As to legislative intent of Acts 1987, No. 900, see Publisher’s Notes, § 15-5-102.

15-5-106. Bonds.

The Arkansas Development Finance Authority is authorized to issue bonds for residential community developments.

History. Acts 1993, No. 1309, § 1.

SUBCHAPTER 2 — ARKANSAS DEVELOPMENT FINANCE AUTHORITY ACT —
ADMINISTRATION

SECTION.	SECTION.
15-5-201. Creation of authority.	15-5-209. Disposition and use of funds.
15-5-202. Board of directors — Members.	15-5-210. Annual report.
15-5-203. Board officers and employees.	15-5-211. Dissolution of the authority.
15-5-204. Prohibition on personal interests in contracts.	15-5-212. Approval of Legislative Council for certain matters.
15-5-205. Board meetings.	15-5-213. Correction Facilities Construction Fund.
15-5-206. [Repealed.]	15-5-214. Criminal background check.
15-5-207. Rights, powers, privileges, and duties of authority.	
15-5-208. Services of public entities to authority — Expenses.	

A.C.R.C. Notes. References to “this subchapter” in §§ 15-5-201 — 15-5-211 and 15-5-213 may not apply to § 15-5-212 which was enacted subsequently.

Acts 2001, No. 1044, § 7, provided: “This act is intended to be retroactive to January 1, 2001 for the purposes of conforming Arkansas law to changes in the federal Internal Revenue Code.”

Effective Dates. Acts 1985, No. 1062, § 28.00: May 1, 1985. Emergency clause provided: “It is hereby found and declared that there is an immediate and urgent need for providing more readily available financing for the alleviation of unemployment, the retention of existing employment and the providing of additional employment in all phases of agricultural, business and industrial enterprises, to

eliminate the shortage of decent, safe, sanitary and affordable housing for elderly persons and families of low and moderate income; to assure the development of health care facilities, for capital improvement facilities and for educational facilities for the benefit of educational institutions within the State; that the continuation of these conditions is inimical to the health, safety, public morals, welfare and economic security of the inhabitants of this State; and that these conditions can be remedied or alleviated through the creation of the Arkansas Development Finance Authority and the issuance of Bonds for the public purposes as provided herein. This Act is immediately necessary in order that such financing can be accomplished and the resulting public

benefits realized. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after May 1, 1985."

Acts 1986 (2nd Ex. Sess.), No. 18, § 4: May 19, 1986. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to permit the Arkansas Development Finance Authority to pool or consolidate bonds issued for related or unrelated activities or projects so as to achieve the lowest costs for its financings, and that the amendment of certain of the provisions of the enabling legislation will serve to further and accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval".

Acts 1987, No. 900, § 10: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly (1) that there is an urgent need to provide financial assistance to Arkansas educational institutions and that the Arkansas Development Finance Authority possesses the expertise and resources to provide such assistance; (2) that the power to create nonprofit corporations will greatly assist the Arkansas Development Finance Authority in carrying out its duties under this Act; (3) that there is an urgent need to modify the prior notification and other requirements of Section 6.02 of Act 1062 of 1985, as amended, in order that the Arkansas Development Finance Authority may, when necessary, move expeditiously to take advantage of favorable credit conditions in issuing bonds to provide pooled or consolidated financings for certain projects and activities; and (4) in certain cases, the Arkansas Development Finance Authority may benefit by issuing bonds denominated in currencies other than the currency of the United States of America. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1988 (3rd Ex. Sess.), No. 31, § 6: Feb. 19, 1988. Emergency clause pro-

vided: "It is hereby found and determined by the General Assembly that the needs of the state for new correction facilities are critical; that it is necessary and desirable that such new facilities be located in various regions of the state and that action must be taken immediately to provide a means for funding construction of such regional correction facilities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 836, § 8: Mar. 22, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly that the financing of working capital is critical to the economic well-being of health care facilities and to the continued provision of health services for the public health and welfare. Affordable financing of working capital may require the participation of many health care facilities, not limited to those within the State. The legislature finds and declares that the responsibility of the State as outlined above cannot be effectively met without a program for financing working capital of health care facilities throughout the nation as provided for in this article, which is determined to be an essential governmental function and for a public purpose. Therefore, an emergency is hereby declared to exist and the act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 885, § 6: Mar. 22, 1989. Emergency clause provided: "It is hereby found and declared that there is an immediate and urgent need to facilitate the development of agriculture and agricultural businesses in the State of Arkansas. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (1st Ex. Sess.), No. 36, § 19: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the

effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1995 (1st Ex. Sess.), No. 9, § 9: Oct. 19, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly meeting in First Extraordinary Session, that the provisions of this Act are of critical importance to the operation, construction, and contracting of correctional facilities and endeavors and that the provisions of this Act are of critical importance to the safety and well being of the people of the State of Arkansas. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1044, § 9: Mar. 22, 2001. Emergency clause provided: "It is found and determined by the General Assembly that there is urgent need to conform the procedures of the allocation of the state private activity volume cap to comport with recent changes to the federal Internal Revenue Code; that the changes are necessary to ensure that the State of Arkansas may use all the private activity volume cap to which it would be entitled in calendar year 2001 and in succeeding years; and that it is necessary that this act have immediate effect to avoid any impairment to the state's private activity volume cap. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 494, § 5: Mar. 18, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law does not specifically provide the terms and conditions under which the Arkansas Development Finance Authority may enter into an interest rate exchange agreement or similar agreement or contract; that there is an urgent need to authorize the Arkansas Development Finance Authority to enter into interest rate exchange agreements or similar agreements or contracts to allow it to take advantage of innovative financing structures; that, by entering into these agreements, the Arkansas Development Finance Authority will be able to more effectively assist Arkansas residents in retaining existing employment and reducing unemployment in all phases of agricultural business and industrial enterprises, in eliminating the shortage of safe and affordable housing, in developing reliable, affordable, efficient, and environmentally compatible sources of energy for all types of public and private consumption; and that this act is immediately necessary because the financial marketplace is very volatile, and immediate en-

actment will allow the Arkansas Development Finance Authority to take advantage of current, favorable market trends in order to compete with other financial market participants. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1)

The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-5-201. Creation of authority.

There is created, with such duties and powers as are hereinafter set forth to carry out the provisions of this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316, a public body politic and corporate, with corporate succession, to be an independent instrumentality exercising essential public functions, and to be known as the "Arkansas Development Finance Authority".

History. Acts 1985, No. 1062, § 4.00; A.S.A. 1947, § 13-2904.

Publisher's Notes. Acts 1985, No. 1062, §§ 4.01, 4.02, and 4.03, transferred all the functions, powers, and duties of the Arkansas Housing Development Agency created by Acts 1977, No. 427, and the Arkansas Agricultural Development Agency created by Acts 1981, No. 529, to the Arkansas Development Finance Authority.

Acts 1985, No. 1062, § 4.03, further

provided that all fund balances transferred from the Arkansas Housing Development Agency to the authority could be utilized only in connection with providing decent, safe, sanitary, and affordable residential housing for elderly persons and families of low and moderate income in the state, or housing developments related thereto.

Cross References. Arkansas Development Finance Authority Small Business Act of 1989, § 15-5-701 et seq.

CASE NOTES

State Agency.

Limited liability corporation and a land company argued that the state did not have an interest in property acquired at a tax sale, because the Arkansas Development Finance Authority (ADFA) was independent of the state, pursuant to this section; however, this section referred to

ADFA as a public body politic and corporate, with corporate succession, to be an independent instrumentality exercising essential public functions. As a result, ADFA was considered a state agency. *Rylwell, L.L.C. v. Ark. Dev. Fin. Auth.*, 372 Ark. 32, 269 S.W.3d 797 (2007).

15-5-202. Board of directors — Members.

(a)(1) The Board of Directors of the Arkansas Development Finance Authority shall consist of the Director of the Department of Finance and Administration or his or her designee, who shall serve during the director's absence, and eleven (11) public members to be appointed by the Governor with the advice and consent of the Senate.

(2) The members appointed by the Governor shall be residents of the state and shall have been qualified electors therein for at least one (1)

year preceding the time of appointment and shall be recognized by their peers as outstanding in the field of economic development or development finance.

(3) Each congressional district in the state shall be represented by at least one (1) public member of the board.

(4)(A) One (1) public member of the board shall be a representative of the agricultural business enterprise industry, and one (1) public member shall be a representative of the state's elderly population and shall be sixty (60) years of age or older.

(B) This member shall not be actively engaged in or retired from the operation of an agricultural business enterprise.

(C) He or she shall be selected from the state at large subject to confirmation by the Senate and shall be a full voting member of the authority.

(5) The additional public member added by this section shall be a public housing or community development professional actively engaged in that profession, and that person must not be a member of any public housing board.

(6)(A) As vacancies occur, the Governor shall ensure that two (2) of the ten (10) members represent various agricultural interests in the state.

(B)(i) In addition to their other duties as board members, those board members representing agriculture shall function as an agriculture subcommittee to oversee and support the Division of Agriculture Development.

(ii) This subcommittee shall assist in policy development and program oversight and will be responsible to the Governor and the authority as a whole.

(C) In addition to the two (2) members of the Agriculture Subcommittee of the Arkansas Development Finance Authority provided for in subdivisions (a)(6)(A) and (B) of this section, the subcommittee shall also include three (3) members of the Senate Committee on Agriculture, Forestry, and Economic Development to be designated by the chair of the committee, and three (3) members of the House Committee on Agriculture, Forestry, and Economic Development to be designated by the chair of the committee, who shall serve as ex officio members of the subcommittee.

(7) In addition to the other members of the board, the Treasurer of State or his or her designee, who shall serve during the Treasurer of State's absence, shall serve as an ex officio member of the board.

(b) The Governor shall appoint public members of the board to terms of four (4) years.

(c)(1) Each board member shall hold office for the term of his or her appointment and until his or her successor shall have been appointed and qualified.

(2) Any vacancy in the board occurring other than by expiration of term shall be filled by appointment by the Governor, but for the unexpired term only.

(3) The terms of the members of the board shall expire on January 14.

(d)(1) Each appointed public board member may be removed from office by the Governor for cause after a public hearing and may be suspended by the Governor pending the completion of the hearing.

(2)(A) Before entering upon his or her duties, each board member shall take and subscribe to an oath to perform the duties of his or her office faithfully, impartially, and justly to the best of his or her ability.

(B) A record of the oath shall be filed in the office of the Secretary of State.

(e) The members of the board shall serve without compensation, but the authority may reimburse its board members for expenses in accordance with § 25-16-901 et seq.

History. Acts 1985, No. 1062, § 4.00; A.S.A. 1947, §§ 6-616, 6-623, 13-2904; Acts 1989, No. 885, § 3; 1989 (1st Ex. Sess.), No. 36, § 17; 1993, No. 159, § 1; 1995, No. 433, § 1; 1997, No. 218, § 1; 1997, No. 250, § 98.

A.C.R.C. Notes. The House Interim Committee on Agriculture, Forestry, and Economic Development and the Senate Interim Committee on Agriculture, Forestry, and Economic Development, referred to in this section, were formerly known as the House Interim Committee on Agriculture and Economic Development and the Senate Interim Committee on Agriculture and Economic Develop-

ment, respectively. Acts 2001, No. 960, § 1, effected the name change.

Publisher's Notes. The word "Interim" was removed from the committee names "Senate Interim Committee on Agriculture, Forestry, and Economic Development" and "House Interim Committee on Agriculture, Forestry, and Economic Development" in (a)(6)(C).

As to initial members of the board of directors of the Arkansas Development Finance Authority, Acts 1985, No. 1062, § 4.04, provided that the Governor should appoint two public members for a term of two years, three for a term of three years, and three for a term of four years.

15-5-203. Board officers and employees.

(a) Annually and at such other times as may be deemed appropriate by the Board of Directors of the Arkansas Development Finance Authority, the board shall elect from the public members of the board appointed by the Governor one (1) of its members as chair and one (1) of its members as vice chair.

(b) The board shall also employ a president who shall serve at the will of the Governor.

(c) The board shall appoint and employ such additional officers, accountants, financial advisors or experts, bond counsel, or other attorneys, agents, and employees as it may require and shall determine their qualifications, duties, and compensation. Periodically, the Arkansas Development Finance Authority will review selection of bond counsel or other attorneys to ensure that legal representatives are selected in a manner that will provide the authority with competent, economical legal representation that furthers the best interest of the authority.

(d) The President of the Arkansas Development Finance Authority shall be an ex officio nonvoting member of the board and may be elected secretary of the board.

History. Acts 1985, No. 1062, § 4.00;
A.S.A. 1947, § 13-2904.

15-5-204. Prohibition on personal interests in contracts.

(a)(1) No officer or employee of the Arkansas Development Finance Authority for purpose of personal gain shall have or attempt to have, directly or indirectly, any interest in any contract or agreement of the authority in connection with the sale or purchase of any bonds or investments of the authority.

(2) The General Assembly finds and declares, in furtherance of the public purposes set forth in § 15-5-201, that it shall not be deemed a violation of the provisions of this section if any member of the Board of Directors of the Arkansas Development Finance Authority or any firm owned by a member or by which a member is employed, shall participate in any program of the authority provided that such participation shall be on the same terms and subject to the same conditions governing all other participants in the program.

(b) Any member, officer, employee, or agent of the authority who shall be found guilty of violating the provisions of this section shall be barred from public employment in the state in any capacity whatsoever for a period of five (5) years from the date he or she was adjudged guilty of the misdemeanor, in addition to such other penalties as may be provided by law.

History. Acts 1985, No. 1062, § 20.00;
A.S.A. 1947, § 13-2920.

15-5-205. Board meetings.

(a) The powers of the Arkansas Development Finance Authority shall be vested in the members of the Board of Directors of the Arkansas Development Finance Authority in office from time to time, and six (6) members of the board shall constitute a quorum at any meeting thereof.

(b) Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of a majority of present and voting board members.

(c) However, any motion and resolution to authorize an issue of bonds, to approve a loan application, to authorize a lease transaction, or to approve a bond guaranty shall have the affirmative vote of at least six (6) board members.

(d) No vacancy in the membership of the board shall impair the right of a quorum of the members to exercise all the powers and perform all duties of the board.

History. Acts 1985, No. 1062, § 4.00;
A.S.A. 1947, § 13-2904.

15-5-206. [Repealed.]

Publisher's Notes. This section, concerning surety bonds, was repealed by Acts 2003, No. 132, § 1. The section was derived from Acts 1985, No. 1062, § 4.00; A.S.A. 1947, § 13-2904.

15-5-207. Rights, powers, privileges, and duties of authority.

(a) The Arkansas Development Finance Authority shall have such rights, powers, and privileges and shall be subject to such duties as provided by this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316

(b) Except as otherwise limited by this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316, the authority shall have the following powers:

- (1) To sue;
- (2) To be sued;
- (3) To have a seal and alter the seal at its pleasure;
- (4) To make and alter bylaws for its organization and internal management;

(5) To make and issue such rules and regulations as may be necessary or convenient in order to carry out the purposes of this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316;

(6) To acquire, hold, and dispose of real and personal property for its corporate purposes;

(7) To appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their compensation;

(8) To borrow money and to issue notes, bonds, and other obligations, whether or not the interest on which is subject to federal income taxation, and to provide for the rights of the lenders or holders thereof;

(9) To issue bonds on behalf of state agencies and political subdivisions;

(10)(A) To issue bonds to provide financing for a specific activity or particular project authorized herein or to provide on a pooled or consolidated basis financing for activities or projects authorized hereunder which shall be secured by and payable solely from the bonds, lease payments, or other obligations issued by or payable to the state agencies, political subdivisions of the state, or others for whose benefit the authority may issue bonds, and the security and sources of payments thereof.

(B)(i) The authority may also issue bonds for the purpose of generating investment earnings or other income.

(ii) The investment earnings or other income shall thereafter be used to finance activities or projects authorized in this section.

(C) Prior to the engagement of a financial institution to serve as trustee, paying agent, or in any fiduciary capacity in connection with any program, indenture, or general resolution of the authority, the authority shall request proposals for services, and the selection of the financial institution shall be made on the basis of the response to

such a request that is the most economical and in the best interest of the authority;

(11) To purchase notes or participations in notes evidencing loans that are secured by mortgages or security interests and to enter into contracts in that regard, or to purchase accounts to finance working capital;

(12)(A) To make secured or unsecured loans, including loans made to financial institutions to secure loans made by the financial institutions to qualifying agricultural business enterprises, capital improvements, educational facilities, energy enterprises, health care facilities, housing developments, industrial enterprises, and short-term advance funding of local government obligations.

(B) Prior to the making of any loan for qualifying agricultural business enterprises or industrial enterprises, the loan transaction shall be recommended to the authority by a financial institution or investment banker;

(13) To sell mortgages and security interests at public or private sale, to negotiate modifications or alterations in mortgage and security interests, to foreclose on any mortgage or security interest in default or commence any action to protect or enforce any right conferred upon it by any law, mortgage, security agreement, contract, or other agreement, and to bid for and purchase property that was the subject of such a mortgage or security interest at any foreclosure or at any other sale, to acquire or take possession of any such property, and to exercise any and all rights as provided by law for the benefit or protection of the authority or mortgage holders;

(14) To collect fees and charges in connection with its loans, bond guaranties, commitments, and servicing, including, but not limited to, reimbursement of costs of financing as the authority shall determine to be reasonable and as shall be approved by the authority;

(15) To make and execute contracts for the servicing of mortgages acquired by the authority pursuant to this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316 and to pay the reasonable value of services rendered to the authority pursuant to those contracts;

(16) To accept gifts, grants, loans, and other aid from the federal government, the state or any state agency, or any political subdivision of the state, or any person or corporation, foundation, or legal entity and to agree to and comply with any conditions attached to federal and state financial assistance not inconsistent with the provisions of this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316;

(17) To invest moneys of the authority, including proceeds from the sale of any bonds, in such manner as the Board of Directors of the Arkansas Development Finance Authority shall determine, subject to any agreement with bondholders stated in the authorizing resolution, as defined in § 15-5-309, providing for the issuance of bonds;

(18) To procure insurance against any loss in connection with its programs, property, and other assets;

(19) To provide technical assistance and advice to the state, political subdivisions of the state, and local governing authorities and to enter

into contracts with the state, political subdivisions of the state, and local governing authorities to provide such services. The state, political subdivisions of the state, and local governing authorities are authorized to enter into contracts with the authority for such services and to pay for such services as may be provided them;

(20)(A) To contract, cooperate, or join with any one (1) or more other governments or public agencies or with any political subdivisions of the state or with the United States to perform any administrative service, activity, or undertaking that any such contracting party is authorized by law to perform, including the issuance of bonds.

(B) An "intergovernmental agreement" is defined as any service contract entered into by a contracting party that establishes a permanent perpetual relationship thereby obligating the financial resources of the contracting party.

(C) The term "permanent or perpetual relationship" is defined for purposes of this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316 as any agreement exhibiting an effective duration greater than one (1) year, twelve (12) calendar months, or an agreement exhibiting no fixed duration but when the apparent intent of such an agreement is to establish a permanent or perpetual relationship. Such intergovernmental agreements shall be authorized by ordinance or resolution of the contracting party. Any intergovernmental agreement enacted may provide for the contracting party to:

(i) Cooperate in the exercise of any function, power, or responsibility;

(ii) Share the services of any officer, department, board, employee, or facility; and

(iii) Transfer or delegate any function, power, responsibility, or duty.

(D) An intergovernmental agreement shall be authorized and approved by the governing body of each party to the agreement, shall set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties, and shall specify the following:

(i) Its duration;

(ii) The precise organization, composition, and nature of any separate legal entity created;

(iii) The purpose or purposes of the intergovernmental agreement;

(iv) The manner of financing the joint or cooperative undertaking and establishing and maintaining a budget;

(v) The permissible method or methods to be employed in accomplishing the partial or complete termination of an agreement and for disposing of property upon partial or complete termination. The method or methods for termination shall include a requirement of six (6) months' written notification of the intent to withdraw by the governing body of the public agency wishing to withdraw;

(vi) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on the joint board;

(vii) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking; and
(viii) Any other necessary and proper matters.

(E)(i) Every agreement prior to and as a condition precedent to its final adoption and performance shall be submitted to the Attorney General, who shall determine whether the agreement is in proper form and compatible with the laws of the State of Arkansas.

(ii) The Attorney General shall approve any agreement submitted to him or her unless he or she finds it does not meet the conditions set forth in this section and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law.

(iii) Failure to disapprove an agreement within thirty (30) days of its submission shall constitute approval;

(21) To undertake and carry out studies and analyses of agricultural business, industrial, health care, housing, energy, educational, capital improvement, and local governments' short-term advance funding needs within the state and ways of meeting such needs;

(22) To establish accounts in one (1) or more depositories;

(23) To lease, acquire, construct, sell, and otherwise deal in and contract concerning any facilities;

(24) To accept funds for and participate in federal and other governmental programs established for the purpose of the promotion and development of agricultural business, industry, the provision of decent, safe, and sanitary housing, health care, education, tourism, capital improvements, and related matters;

(25) To have and exercise all of the powers granted to the public housing authorities by the state, except that the authority shall not have the power of eminent domain;

(26) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316;

(27)(A) To assist minority businesses in obtaining loans or other means of financial assistance.

(B) The terms and conditions of such loans or financial assistance, including the charges for interest and other services, will be consistent with the provisions of this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316.

(C) In order to comply with this requirement, efforts must be made to solicit for review and analysis proposed minority business ventures.

(D) Be it further provided that basic loan underwriting standards will not be waived to inconsistently favor minority persons or businesses from the intent of the authority's lending practices;

(28) To create nonprofit corporations that shall have such purposes and powers as the board shall determine, to assist in carrying out the purposes of this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301

— 15-5-316, and to provide technical, administrative, and financial assistance to those nonprofit corporations;

(29) To make secured or unsecured loans to or to guarantee the payment of loans made to businesses for the purpose of financing the export of goods to foreign countries if the board shall first find that a substantial portion of the value of those goods prior to export has been or will be added in the state;

(30) To make loans and enter into contracts with respect to, and issue bonds on behalf of, nonprofit organizations, including the issuance of qualified 501(c)(3) bonds as defined in the Internal Revenue Code;

(31) To make loans and enter into contracts with respect to, and issue bonds on behalf of, scientific and technical services businesses, technology-based enterprises, and tourism enterprises;

(32) To administer the allocation of the state ceiling of private activity bonds, as that term is defined in the Tax Reform Act of 1986, which are subject to volume limitations under federal law, including particularly the limitations under section 146 of the Internal Revenue Code of 1986; and

(33) To enter into an interest rate exchange agreement or similar agreement or contract.

(c) All applications filed with the Arkansas Development Finance Authority for direct loans authorized under subsection (b) of this section shall be treated, handled, and considered in the same manner as set forth for other loan applications in § 15-5-409.

History. Acts 1985, No. 1062, §§ 4.00, 5.00; 1986 (2nd Ex. Sess.), No. 18, § 1; A.S.A. 1947, §§ 13-2904, 13-2905; Acts 1987, No. 900, §§ 2-4; 1989, No. 836, § 4; 2001, No. 1044, § 6; 2003, No. 494, § 2; 2007, No. 593, § 1.

A.C.R.C. Notes. Acts 2001, No. 1044, § 7, provided: "This act is intended to be retroactive to January 1, 2001 for the purposes of conforming Arkansas law to changes in the federal Internal Revenue Code."

Publisher's Notes. Acts 1987, No. 900, § 9, provided: "It is the intention of this act to amend such portions of Acts 1985,

No. 1062, as amended, as are specifically mentioned in this act; the remainder of Acts 1985, No. 1062 shall remain in full force and effect as enacted until it shall be further amended or repealed."

Amendments. The 2007 amendment added (b)(30) and (b)(31) and redesignated the remaining subsections accordingly.

U.S. Code. Section 146 of the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 146.

The Tax Reform Act of 1986, referred to in this section, is codified primarily throughout Title 26 of the U.S. Code.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Natural Resources, Development

Finance Authority, 26 U. Ark. Little Rock L. Rev. 439.

15-5-208. Services of public entities to authority — Expenses.

(a) All officers, departments, boards, agencies, divisions, and commissions of the state are authorized and empowered to render any and all of such services to the Arkansas Development Finance Authority as

may be within the area of their respective governmental functions as fixed or established by law and as may be requested by the authority.

(b) The cost and expenses of any such services shall be met and provided by the authority.

History. Acts 1985, No. 1062, § 19.00;
A.S.A. 1947, § 13-2919.

15-5-209. Disposition and use of funds.

(a) All revenues received by the Arkansas Development Finance Authority, except revenues derived from appropriations, are specifically declared to be cash funds restricted in their use and dedicated and to be used solely as provided in this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316.

(b) The authority is authorized and empowered to use the proceeds of any bond issues, together with any other available funds, for the making of loans, purchasing mortgages, security interests in loan participations as herein authorized and paying all incidental expenses in connection therewith, paying expenses of authorizing and issuing the bonds, paying interest on the bonds until revenues thereof are available in sufficient amounts, and funding such reserves as the authority deems necessary and desirable.

(c) All moneys received by the authority, other than moneys received by virtue of an appropriation, are specifically declared to be cash funds restricted in their use and to be used solely as provided herein.

(d) No moneys of the authority other than moneys received by appropriation shall be deposited in the State Treasury.

(e) No part of the funds of the authority shall inure to the benefit of or be distributed to its employees, officers, or board of directors, except that the authority shall be authorized and empowered to pay its employees reasonable compensation.

(f) The pledged revenues shall not be deposited into the State Treasury but when received shall be deposited by the authority in an account or accounts in a depository or depositories specified by resolution of the authority and used by the authority solely for the purpose of carrying out the provisions of this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316 and in conformity with the provisions of any resolution or any indenture securing bonds of the authority or other agreement entered into by the authority pursuant to the provisions of this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316.

(g) Any revenues at any time held by the authority in excess of the amount necessary to accomplish the purposes of this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316 and to comply with all covenants and agreements of the authority relating thereto may by resolution of the Board of Directors of the Arkansas Development Finance Authority be declared to be surplus moneys and may be designated for deposit to such other fund or funds as the General Assembly may deem appropriate.

(h) The authority may create and establish one (1) or more special funds or accounts as appropriate to secure bonds issued under this subchapter and §§ 15-5-101 — 15-5-106 and 15-5-301 — 15-5-316, as determined by the authority.

History. Acts 1985, No. 1062, §§ 4.00, 6.00, 13.00, 14.00; 1986 (2nd Ex. Sess.), No. 18, § 2; A.S.A. 1947, §§ 13-2904, 13-2906, 13-2913, 13-2914.

Publisher's Notes. Acts 1987, No. 62, provided additional funds for the Public School Fund, through surplus funds or

issuing or refinancing bonds of the Arkansas Development Finance Authority, to be used by the Department of Education to increase the moneys available for minimum foundation aid for the 1986-87 fiscal year.

15-5-210. Annual report.

(a) On or before January 31 of each year, the Arkansas Development Finance Authority shall make an annual report of its activities for the preceding fiscal year to the Governor and to the General Assembly.

(b) The report shall contain an audit of the preceding fiscal year prepared by an independent certified public accountant acceptable to the bond rating agency used by the authority.

History. Acts 1985, No. 1062, § 18.00; A.S.A. 1947, § 13-2918; Acts 1995, No. 783, § 1; 2003, No. 1037, § 1.

CASE NOTES

Audit.

By requiring audits to be performed by a private auditing firm and not the state auditor, the state has elected to employ a private firm to perform a task normally carried out by state employees or officials;

thus, the audit working papers of the Legislative Joint Auditing Committee are considered public records subject to the Freedom of Information Act (§ 25-19-101 et seq.). *Swaney v. Tilford*, 320 Ark. 652, 898 S.W.2d 462 (1995).

15-5-211. Dissolution of the authority.

(a) The Arkansas Development Finance Authority may be dissolved by act of the General Assembly on condition that the authority has no debts or obligations outstanding or provision has been made for the payment or retirement of such debts or obligations.

(b) Upon any such dissolution of the authority, all property, funds, and assets thereof shall be vested in the state.

History. Acts 1985, No. 1062, § 4.00; A.S.A. 1947, § 13-2904.

15-5-212. Approval of Legislative Council for certain matters.

(a) The Arkansas Development Finance Authority shall not employ or select any investment banker, consultant, professional financial advisor, or attorney unless the selection criteria to be used in the selection have been submitted to the Legislative Council for review.

(b)(1) As soon as practicable after closing any new bond issue, the authority shall submit a program fact sheet for the new bond issue to the Legislative Council for its review. The program fact sheet shall include, but not be limited to, the fees, interest rates, average coupon life of the securities, and gross spread for the new bond issue.

(2) A copy of each program fact sheet shall be submitted to the Division of Legislative Audit at the same time that the program fact sheet is submitted to the Legislative Council.

History. Acts 1989 (1st Ex. Sess.), No. 36, § 11; 2005, No. 683, § 1.

A.C.R.C. Notes. References to “this subchapter” in §§ 15-5-201 — 15-5-211 and 15-5-213 may not apply to this section which was enacted subsequently.

Former section 15-5-212, concerning the approval of Legislative Council for

certain matters, is deemed to be superseded by this section. The former section was derived from Acts 1987, No. 1059, § 6.

Amendments. The 2005 amendment redesignated former (b) as present (b)(1); and added (b)(2).

15-5-213. Correction Facilities Construction Fund.

(a) There is established on the books of the Arkansas Development Finance Authority a special restricted fund to be known as the “Correction Facilities Construction Fund”. This fund shall be administered in accordance with the provisions of this section.

(b) The fund shall receive moneys payable from the Treasurer of State in accordance with § 15-5-422. All moneys deposited in the fund and all income, interest, and earnings therefrom are declared to be cash funds restricted in their use and dedicated and are to be used solely for acquisition and construction of regional correction facilities for use by the Department of Correction, specifically including a regional correction facility in Chicot County, which facility will be leased to and utilized by the department.

(c) The fund shall be held and the amounts therein invested by the authority only in accordance with this section. The moneys in the fund shall be invested by the authority in accordance with the restrictions established for the Bond Guaranty Reserve Account provided for in § 15-5-407. The fund and the moneys in the fund shall not be part of the general funds of the authority subject to claims of the general creditors of the authority. The fund may be pledged by the authority upon proper authorization of the Board of Directors of the Arkansas Development Finance Authority only to secure repayment of obligations of the authority, the proceeds of which are used to construct or acquire correction facilities as specified in subsection (b) of this section.

(d) After July 1, 2008, as the authority no longer has outstanding obligations, the proceeds of which have been used to construct and acquire correction facilities as specified in subsection (b) of this section, all amounts remaining in the fund shall be paid by the authority to the Treasurer of State.

(e)(1) There is created within the Correction Facilities Construction Fund of the Arkansas Development Finance Authority an account

entitled the "Correction Facilities Privatization Account", and the account shall receive:

(A) Moneys payable from funds in the Department of Correction as established in § 12-27-128;

(B) Such moneys as are transferred pursuant to § 22-3-1210(c); and

(C) Such cash funds of the department as are deemed necessary by the Chief Fiscal Officer of the State for the purposes established herein.

(2) All moneys deposited in the Correction Facilities Privatization Account and all income, interest, and earnings therefrom are declared to be cash funds restricted in their use and dedicated to be used solely for acquisition, construction, and rehabilitation of correction facilities for the use and benefit of the department or for payments to private contractors for the use of correction facilities by the department.

(3) The moneys deposited in the account shall not be subject to the provisions of subsection (d) of this section.

(4) The account shall not be subject to distribution to the Treasurer of State, and the account shall remain as an account of the authority.

History. Acts 1988 (3rd Ex. Sess.), No. 31, § 1; 1995 (1st Ex. Sess.), No. 9, § 3.

A.C.R.C. Notes. Acts 1988 (3rd Ex. Sess.), No. 31, § 5, provided that the Arkansas Development Finance Authority

shall make every effort to study any and all available means of financing to implement this section, specifically including the financing mechanisms of the various state retirement systems.

15-5-214. Criminal background check.

(a) The Arkansas Development Finance Authority may require a state and federal criminal background check, which shall conform to the applicable federal standards and shall include the taking of fingerprints of an:

(1) Applicant of a program administered by the authority, including individual members of an entity that may participate in a program administered by the authority;

(2) Applicant for employment with the authority; or

(3) Employee of the authority.

(b) The criminal background check shall be performed through the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(c) Prior to a criminal background check, the applicant or employee shall sign a release authorizing the background check.

(d) The results of the background check shall be used by the authority to determine the fitness or suitability of:

(1) The applicant for participation in an authority program or for employment with the authority; or

(2) An employee for continued employment with the authority.

(e) The authority shall treat the criminal background information of an applicant or employee as confidential.

(f) A criminal background check obtained under this section shall be destroyed by the authority within six (6) months of the receipt of the background check.

(g) The authority shall promulgate rules for the requesting and use of criminal background checks under this section.

History. Acts 2005, No. 2173, § 1.

SUBCHAPTER 3 — ARKANSAS DEVELOPMENT FINANCE AUTHORITY ACT — BONDS

SECTION.

- 15-5-301. Power to issue bonds.
- 15-5-302. Underwriters and experts.
- 15-5-303. Exclusive issuer of revenue bonds for public facilities.
- 15-5-304. Exclusive issuer of mortgage bonds.
- 15-5-305. Authorized investors.
- 15-5-306. Tax exemption.
- 15-5-307. Request to issue certain bonds.
- 15-5-308. Notice of issue — Disapproval.
- 15-5-309. Authorizing resolution and trust indenture — Terms and qualities of bonds.
- 15-5-310. Sale.

SECTION.

- 15-5-311. Execution.
- 15-5-312. Statement on face of bond — Security.
- 15-5-313. Pledge valid and binding — Lien.
- 15-5-314. Refunding bonds.
- 15-5-315. Securing deposit of public funds.
- 15-5-316. No personal liability.
- 15-5-317. Power to enter into an interest rate exchange agreement or similar agreement or contract.

Effective Dates. Acts 1985, No. 1062, § 28.00: May 1, 1985. Emergency clause provided: "It is hereby found and declared that there is an immediate and urgent need for providing more readily available financing for the alleviation of unemployment, the retention of existing employment and the providing of additional employment in all phases of agricultural, business and industrial enterprises, to eliminate the shortage of decent, safe, sanitary and affordable housing for elderly persons and families of low and moderate income; to assure the development of health care facilities, for capital improvement facilities and for educational facilities for the benefit of educational institutions within the State; that the continuation of these conditions is inimical to the health, safety, public morals, welfare and economic security of the inhabitants of this State; and that these conditions can be remedied or alleviated through the creation of the Arkansas Development Finance Authority and the issuance of Bonds for the public purposes as provided herein. This Act is immediately

necessary in order that such financing can be accomplished and the resulting public benefits realized. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after May 1, 1985."

Acts 1987, No. 900, § 10: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly (1) that there is an urgent need to provide financial assistance to Arkansas educational institutions and that the Arkansas Development Finance Authority possesses the expertise and resources to provide such assistance; (2) that the power to create nonprofit corporations will greatly assist the Arkansas Development Finance Authority in carrying out its duties under this Act; (3) that there is an urgent need to modify the prior notification and other requirements of Section 6.02 of Act 1062 of 1985, as amended, in order that the Arkansas Development Finance Authority may, when necessary, move expeditiously to take advantage of

favorable credit conditions in issuing bonds to provide pooled or consolidated financings for certain projects and activities; and (4) in certain cases, the Arkansas Development Finance Authority may benefit by issuing bonds denominated in currencies other than the currency of the United States of America. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 494, § 5: Mar. 18, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law does not specifically provide the terms and conditions under which the Arkansas Development Finance Authority may enter into an interest rate exchange agreement or similar agreement or contract; that there is an urgent need to authorize the Arkansas Development Finance Authority to enter into interest rate exchange agreements or similar agreements or contracts to allow it to take advantage of innovative financing structures; that, by entering into these agreements, the Arkansas Development Fi-

nance Authority will be able to more effectively assist Arkansas residents in retaining existing employment and reducing unemployment in all phases of agricultural business and industrial enterprises, in eliminating the shortage of safe and affordable housing, in developing reliable, affordable, efficient, and environmentally compatible sources of energy for all types of public and private consumption; and that this act is immediately necessary because the financial marketplace is very volatile, and immediate enactment will allow the Arkansas Development Finance Authority to take advantage of current, favorable market trends in order to compete with other financial market participants. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-5-301. Power to issue bonds.

(a)(1) The Arkansas Development Finance Authority is authorized and empowered to issue bonds from time to time, whether or not the interest on the bonds is subject to federal income taxation, either for a specific activity or for a particular project or on a pooled or consolidated basis for a series of related or unrelated activities or projects in such amounts as shall be determined by the authority for the purpose of enhancing the Public School Fund or financing qualified agricultural business enterprises, capital improvement facilities, educational facilities, health care facilities, housing developments, industrial enterprises, exports of goods and short-term advance funding of local government obligations, scientific and technical services businesses, technology-based enterprises, tourism enterprises, nonprofit organizations, or any combination of those facilities or enterprises, or any interest in facilities, including, without limitation, leasehold interests in and mortgages on those facilities.

(2) The proceeds of and earnings from the bond issues, in amounts determined by the authority, may be deposited into the State Treasury to the credit of the fund.

(b) However, nothing in this subchapter and §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, and 15-5-213 shall be construed to authorize the authority to issue or sell revenue bonds or use the proceeds thereof to purchase, condemn, or otherwise acquire a utility plant or distribution system owned or operated by a regulated public utility.

History. Acts 1985, No. 1062, § 6.00; 1986 (2nd Ex. Sess.), No. 18, § 2; A.S.A. 1947, § 13-2906; Acts 1987, No. 900, § 5; 2007, No. 593, § 2.

Publisher's Notes. Acts 1987, No. 900, § 9, provided: "It is the intention of this act to amend such portions of Acts 1985, No. 1062, as amended, as are specifically mentioned in this act; the remainder of

Acts 1985, No. 1062 shall remain in full force and effect as enacted until it shall be further amended or repealed."

Amendments. The 2007 amendment, in (a)(1), inserted "scientific and technical services businesses, technology-based enterprises, tourism enterprises, nonprofit organizations" and "or enterprises."

15-5-302. Underwriters and experts.

(a) The Arkansas Development Finance Authority, when requested to do so by a state agency or a political subdivision, is authorized and empowered to engage an underwriter or underwriters to facilitate the issuance and sale of bonds to accomplish the financing of a specific activity or a particular project of the state agency or political subdivision permitted to be financed hereunder, or other activities and projects for which no state agency or political subdivision is authorized by law to obtain such financing, which the authority determines to be consistent with the purposes of this subchapter and §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, and 15-5-213.

(b) In the furtherance thereof, the authority is also authorized and empowered to engage in connection therewith such legal counsel and other experts as may be recommended by the underwriter or underwriters.

History. Acts 1985, No. 1062, § 6.00; A.S.A. 1947, § 13-2906.

15-5-303. Exclusive issuer of revenue bonds for public facilities.

It is the intention of the General Assembly that the Arkansas Development Finance Authority shall be the exclusive issuer of revenue bonds for public facilities acquired or constructed for the benefit of state agencies, except the Arkansas Student Loan Authority, the respective boards of trustees of state-supported institutions of higher education, the State Board of Career Education, the State Board of Finance, the War Memorial Stadium Commission, and the Arkansas Economic Development Council when issuing bonds pursuant to §§ 15-4-604, 15-4-605, and 15-4-608, and § 15-4-701 et seq.

History. Acts 1985, No. 1062, § 24.00; A.S.A. 1947, § 13-2922; Acts 2007, No. 827, § 132.

§ 2, provided:

"Arkansas Economic Development Commission renamed Arkansas Economic Development Council.

A.C.R.C. Notes. Acts 2007, No. 1602,

"(a)(1) The Arkansas Economic Development Commission, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Council is established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Economic Development Commission.

"(3) The Chair of the Arkansas Economic Development Commission shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and authority of the Arkansas Economic Development Commission before the effective date of the name change.

"(c) Appropriations authorized for the personal services and operating expenses of the Arkansas Economic Development Commission may be utilized for the personal services and operating expenses of the Arkansas Economic Development Council."

Acts 2007, No. 1602, § 7, provided: "The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act."

Publisher's Notes. Acts 1985, No. 1062, § 24.00, provided, in part, that the authority of the following agencies to issue revenue bonds, from May 1, 1985, was transferred to the Arkansas Development

Finance Authority: the Arkansas State Building Services pursuant to Acts 1977, No. 490, and No. 820; the Arkansas Revenue Department Building Commission pursuant to Acts 1977, No. 749; the Arkansas State Department of Health Building Commission pursuant to Acts 1977, No. 686; the State Board of Education pursuant to Acts 1977, No. 554; the Justice Building Commission pursuant to Acts 1955, No. 375 (§§ 22-3-901, 22-3-903 — 22-3-922); the Arkansas Board of Mental Retardation pursuant to Acts 1963, No. 186 (§§ 20-48-411, 20-48-501 — 20-48-509); the Arkansas Department of Parks and Tourism pursuant to Acts 1977, No. 515 and Acts 1979, No. 832; the Arkansas State Parks, Recreation, and Travel Commission pursuant to Acts 1980, (Ex. Sess.), No. 71 (§§ 22-4-312, 26-58-303) and Acts 1953, No. 399 (§§ 22-4-302 — 22-4-310); the Arkansas State Plant Board pursuant to Acts 1969, No. 117; the Arkansas Pollution Control and Ecology Commission pursuant to Acts 1971, No. 108 (§ 8-5-301 et seq.); the Arkansas Soil and Water Conservation Commission pursuant to Acts 1969, No. 217 (§§ 15-22-501 — 15-22-503, 15-22-505 — 15-22-514); and the White River Navigation District Commission, pursuant to Acts 1963, No. 168.

The White River Navigation District Commission was terminated on June 30, 1979, by Acts 1977, No. 100, § 3.

Amendments. The 2007 amendment deleted "the Arkansas Turnpike Authority" following "the War Memorial Stadium Commission," and made a related change.

15-5-304. Exclusive issuer of mortgage bonds.

For purposes of compliance with the Mortgage Subsidy Bond Tax Act of 1980, the General Assembly finds and declares that the Arkansas Development Finance Authority shall be the exclusive issuer of mortgage bonds as defined in the Mortgage Subsidy Bond Tax Act of 1980, and the authority shall receive the entire allocation to the state in principal amount of bonds to be issued annually.

History. Acts 1985, No. 1062, § 9.00; A.S.A. 1947, § 13-2909.

U.S. Code. The Mortgage Subsidy Bond Tax Act of 1980, referred to in this section, is codified as a note to 26 U.S.C.

§ 1 and as §§ 103, 103A. Section 103A of title 26 was repealed by Pub. L. No. 99-514. For similar provisions, see 26 U.S.C. § 143.

15-5-305. Authorized investors.

Any municipality or any board, commission, or other authority duly established by ordinance of any municipality or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any such municipality or the board of trustees of any retirement system created by the General Assembly, in its discretion, may invest any of its funds not immediately needed for its purposes in bonds issued under the provisions of this subchapter and §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, and 15-5-213, and bonds issued under the provisions of this subchapter and §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, and 15-5-213 shall be eligible to secure the deposit of public funds.

History. Acts 1985, No. 1062, § 17.00;
A.S.A. 1947, § 13-2917.

15-5-306. Tax exemption.

Any bonds issued under the provisions of this subchapter and §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, and 15-5-213 and the interest paid thereon, unless specifically declared to be taxable in the authorizing resolution, shall be exempt from all state, county, and municipal taxes, and the exemption shall include income, inheritance, and property taxes.

History. Acts 1985, No. 1062, § 10.00;
A.S.A. 1947, § 13-2910.

15-5-307. Request to issue certain bonds.

(a) When gubernatorial approval is required by the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 or any other federal or state law, the Governor is authorized to approve the issuance of bonds by the Arkansas Development Finance Authority upon receipt of written request for approval from the Board of Directors of the Arkansas Development Finance Authority.

(b) The written request shall state that the authority has conducted a public hearing pursuant to appropriate public notice concerning the purposes for which the bonds are to be issued, shall contain a description of the project or projects to be financed, and shall describe the method of financing the project or projects.

(c) The written request shall also summarize the comments made and questions posed at the public hearing.

History. Acts 1985, No. 1062, § 9.00;
A.S.A. 1947, § 13-2909.

U.S. Code. The Tax Equity and Fiscal

Responsibility Act of 1982, referred to in this section, is primarily codified throughout Titles 26 and 42 of the U.S. Code.

15-5-308. Notice of issue — Disapproval.

(a) Not less than thirty (30) days prior to the issuance of any bonds authorized under this subchapter and §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, and 15-5-213 with respect to any project or activity which is to be undertaken for the direct benefit of any person or entity which is not a state agency or a political subdivision, written notice of the intention of the Arkansas Development Finance Authority to provide financing and issue bonds therefor shall be given by the President of the Arkansas Development Finance Authority to the mayor of the municipality in which the project or activity is to be located, or, if the project or activity is not proposed to be located within a municipality, the notice shall be given to the county judge of the county.

(b) No bonds for the financing of the project or activity shall be issued by the authority or any other political subdivision or instrumentality of the state for a one-year period if, within fifteen (15) days after the giving of the notice, the legislative body of the political subdivision in which the project or activity is proposed to be located shall have duly enacted an ordinance or resolution stating express disapproval by the legislative body of the project or activity and the reasons therefor.

(c) Such disapproval shall not be effective unless a certified copy of the ordinance or resolution shall have been delivered to the president within twenty (20) days of the giving of notice by the president as herein required.

(d)(1) Any notice required by this section may be given by the mailing thereof or actual delivery thereof to the proper person, and it shall be conclusively presumed that any notice given by mail, with proper postage prepaid, has been timely received by the addressee.

(2) However, it shall not be necessary to give the notice provided for in this section if the project or activity is of such a nature that a public hearing has been held in the affected political subdivision with respect thereto and approval given in the manner required by § 147(f) of the Internal Revenue Code of 1986.

(e) This section shall not apply to the issuance of bonds to provide financing on a pooled or consolidated basis for a series of related or unrelated activities or projects when the activities or projects have not been specifically identified prior to the issuance of the bonds.

History. Acts 1985, No. 1062, § 6.00; A.S.A. 1947, § 13-2906; Acts 1987, No. 900, § 5.

Publisher's Notes. As to legislative intent of Acts 1987, No. 900, see Publisher's Note to § 15-5-301.

U.S. Code. Section 147(f) of the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 147(f).

15-5-309. Authorizing resolution and trust indenture — Terms and qualities of bonds.

(a)(1) Bonds issued in accordance with this subchapter shall be

authorized by resolution of the Arkansas Development Finance Authority.

(2) The bonds may be issued as registered bonds or coupon bonds, payable to bearer, and if coupon bonds, may be registerable as to principal only or as to principal and interest and may be exchangeable for bonds of another denomination or in another form.

(3) The bonds may:

- (A) Be in such form and denominations;
 - (B) Have such date or dates;
 - (C) Be stated to mature at such time or times;
 - (D) Bear interest payable at such times and at such rate or rates, including variable rates;
 - (E) Be zero coupon or capital appreciation bonds;
 - (F) Be payable at such places within or without the state;
 - (G) Be subject to such terms of redemption in advance of maturity at such prices; and
 - (H) Contain such terms and conditions,
- all as the authority shall determine.

(4) The bonds shall be denominated in the currency of the United States unless the authority in its discretion determines that denominating the bonds in the currency of a foreign country is in the best interests of the authority. In that case, the bonds may be denominated in the currency of a foreign country.

(5) The bonds shall have all the qualities of and shall be deemed to be negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration as set forth in this subsection.

(6) The authorizing resolution may contain any other terms, covenants, and conditions that the authority deems reasonable and desirable, including, without limitation, those pertaining to the:

- (A) Maintenance of various funds and reserves;
- (B) Nature and extent of any security for payment of the bonds;
- (C) Custody and application of the proceeds of the bonds;
- (D) Collection and disposition of revenues;
- (E) Investing for authorized purposes; and
- (F) Rights, duties, and obligations of the authority and the holders and registered owners of the bonds.

(b)(1) The authorizing resolution may provide for the execution of a trust indenture between the authority and any financial institution within or without the State of Arkansas.

(2) The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the authority, including, without limitation, those pertaining to the:

- (A) Maintenance of various funds and reserves;
- (B) Nature and extent of any security for the payment of the bonds;
- (C) Custody and application of the proceeds of the bonds;
- (D) Collection and disposition of revenues;
- (E) Investing and reinvesting of any moneys during periods not needed for authorized purposes;

(F) Credit enhancement and liquidity features; and

(G) Rights, duties, and obligations of the authority and the holders and registered owners of the bonds.

(c)(1) Any authorizing resolution and trust indenture relating to the issuance and security of the bonds shall constitute a contract between the authority and holders and registered owners of the bonds.

(2) The contract and all covenants, agreements, and obligations therein shall be promptly performed in strict compliance with the terms and provisions of the contract, and the covenants, agreements, and obligations of the authority may be enforced by mandamus or other appropriate proceeding at law or in equity.

History. Acts 1985, No. 1062, § 7.00; A.S.A. 1947, § 13-2907; Acts 1987, No. 900, § 6; 2003, No. 494, § 3.

Publisher's Notes. As to legislative intent of Acts 1987, No. 900, see Publisher's Note to § 15-5-301.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Natural Resources, Development

Finance Authority, 26 U. Ark. Little Rock L. Rev. 439.

15-5-310. Sale.

(a) The bonds may be sold in such manner, either at public or private sale, and upon such terms as the Arkansas Development Finance Authority shall determine to be reasonable and expedient for effectuating the purposes for which the authority was created.

(b) The bonds may be sold at a price the authority may accept, including sale at discount.

History. Acts 1985, No. 1062, § 8.00; A.S.A. 1947, § 13-2908.

15-5-311. Execution.

(a) The bonds shall be executed by manual or facsimile signature of the Chair of the Board of Directors of the Arkansas Development Finance Authority and the manual or facsimile signature of the President of the Arkansas Development Finance Authority or any other director or officer authorized to do so by resolution of the Board of Directors of the Arkansas Development Finance Authority.

(b) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of the bonds or coupons, their signatures, nevertheless, shall be valid and sufficient for all purposes.

(c) The authority shall adopt and use a seal in the execution and issuance of the bonds, and each bond shall be impressed or imprinted with the seal of the authority.

History. Acts 1985, No. 1062, § 8.00;
A.S.A. 1947, § 13-2908.

15-5-312. Statement on face of bond — Security.

(a) It shall be plainly stated on the face of each bond that it has been issued under this subchapter, that the bonds shall be obligations only of the Arkansas Development Finance Authority, and that in no event shall the bonds constitute an indebtedness of the State of Arkansas or an indebtedness for which the faith and credit of the State of Arkansas or any of its revenues are pledged or an indebtedness secured by lien on or a security interest in any property of the state.

(b) The payment of the principal of, redemption premium, if any, and interest on the trustee's and paying agent's fees in connection with the bonds may be secured by a lien on any security interest in facilities financed by bonds issued hereunder, by lien or pledge of loans made or mortgages purchased by the authority, and any collateral security received by the authority, including, without limitation, the authority's interest in and any revenue derived from any loan agreements.

(c) It shall not be necessary to the perfection of the lien and pledge for such purposes that the trustee in connection with the bond issue or the holders of the bonds take possession of the loans, mortgages, and collateral security.

History. Acts 1985, No. 1062, § 8.00;
A.S.A. 1947, § 13-2908.

15-5-313. Pledge valid and binding — Lien.

(a) Any pledge of revenues, moneys, funds, or other property made by the Arkansas Development Finance Authority shall be valid and binding from the time when the pledge is made and the revenues, moneys, funds, or other property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without the physical delivery thereof or further act on the part of the authority, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof.

(b) Neither the authorizing resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the authority.

History. Acts 1985, No. 1062, § 11.00;
A.S.A. 1947, § 13-2911.

15-5-314. Refunding bonds.

(a) Bonds may be issued for the purpose of refunding, either at maturity or in advance of maturity, any bonds issued under this subchapter.

(b) The refunding bonds may either be sold or delivered in exchange for the bonds being refunded.

(c) If sold, the proceeds may either be applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement of the bonds being refunded, as shall be specified by the Arkansas Development Finance Authority and the authorizing resolution or trust indenture securing the refunding bonds.

(d) The authorizing resolution or trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same security for their payment as provided for the bonds being refunded.

(e) Refunding bonds shall be sold and secured in accordance with the provisions of this subchapter pertaining to the sale and security of the bonds.

History. Acts 1985, No. 1062, § 15.00;
A.S.A. 1947, § 13-2915.

15-5-315. Securing deposit of public funds.

Bonds issued under this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 1985, No. 1062, § 16.00;
A.S.A. 1947, § 13-2916.

15-5-316. No personal liability.

No director or officer of the Arkansas Development Finance Authority shall be liable personally for any reason arising from the issuance of bonds under this subchapter unless he or she shall have acted with a corrupt intent.

History. Acts 1985, No. 1062, § 12.00;
A.S.A. 1947, § 13-2912.

15-5-317. Power to enter into an interest rate exchange agreement or similar agreement or contract.

(a) In connection with bonds issued before, on, or after March 18, 2003, the Arkansas Development Finance Authority shall have the power to:

(1)(A) Enter into an interest rate exchange agreement or similar agreement or contract with any person on a competitive or negotiated basis under the terms and conditions as the authority shall determine.

(B) The terms and conditions of the agreements under subdivision (a)(1)(A) of this section in which the authority may enter shall include terms as to default or early termination and indemnification by the

authority or any other party to the agreement for loss of benefits as a result of default or early termination;

(2) Procure insurance, letters of credit, or other credit enhancement with respect to an interest rate exchange agreement or similar agreement or contract;

(3) Provide security for the payment or performance of its obligations with respect to an interest rate exchange agreement or similar agreement or contract in accordance with existing state law governing security for its bonds; and

(4) Modify, amend, or replace an interest rate exchange agreement or similar agreement or contract.

(b) Any interest rate exchange agreement or similar agreement or contract entered into under this section is subject to the following limitations, and the authority shall not enter into an interest rate exchange agreement or similar agreement or contract unless:

(1) The counterparty to the agreement has obtained a credit rating from at least one (1) nationally recognized statistical rating agency that is at least equal to the lowest investment grade rating of any of the authority's bonds by the rating agency or the payment obligations of the counterparty are unconditionally guaranteed by an entity with the credit ratings stated in this section;

(2) The written contract evidencing the agreement provides that if the rating of the counterparty or of the guarantor of the counterparty falls below the rating level stated in subdivision (b)(1) of this section during the term of the agreement, the obligation of the counterparty or guarantor to pay the aggregate security value of the contract to the authority shall be collateralized by the counterparty's or guarantor's investment obligations to the extent required by the authority's guidelines adopted under this section; and

(3) The authority files in its records a finding by independent financial advisors to the authority that the terms and conditions of the interest rate exchange agreement or similar agreement or contract reflect a fair market value regardless of whether the agreement was solicited on a competitive or negotiated basis.

(c) Prior to authorizing the approval of any contract for an interest rate exchange agreement or a similar agreement, the authority shall adopt guidelines for the use of an interest rate exchange agreement or a similar agreement or contract that shall include the following:

(1) The methods by which those agreements are to be solicited and procured;

(2) The standards and procedures for counterparty selection;

(3) The aspects of risk exposure associated with those agreements;

(4) The types of agreements to be entered into;

(5) The collateralization requirements imposed upon a counterparty or guarantor in the event of a rating agency downgrade; and

(6) The long-term implications associated with entering into those agreements, such as:

(A) Costs of borrowing;

(B) Historical trends;

(C) Any potential impact on the future ability to redeem bonds, including opportunities to refund related debt obligations; or

(D) Any similar consideration.

(d) The authority may amend the guidelines for an interest rate exchange agreement or similar agreement or contract and shall make the guidelines available for public inspection at the offices of the authority.

(e) Pursuant to the authority's reporting requirement under § 15-5-212, the authority shall disclose to the Governor and to the Legislative Council each interest rate exchange agreement or a similar agreement or contract to which the authority is a party.

History. Acts 2003, No. 494, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Finance Authority, 26 U. Ark. Little Rock L. Rev. 439.
Legislation, 2003 Arkansas General Assembly, Natural Resources, Development

SUBCHAPTER 4 — ARKANSAS DEVELOPMENT FINANCE AUTHORITY BOND GUARANTY ACT OF 1985

SECTION.

- 15-5-401. Title.
- 15-5-402. Legislative findings and declaration of public necessity.
- 15-5-403. Definitions.
- 15-5-404. Power of authority to grant or deny guaranty bonds.
- 15-5-405. When bonds may be guaranteed.
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- 15-5-407. Bond Guaranty Reserve Account — Investment of funds.
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SECTION.

- 15-5-411. Grants to fund.
- 15-5-412. Guaranty agreement provision.
- 15-5-413. Regulations — Remedies.
- 15-5-414. Authority to use money committed to other projects.
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- 15-5-418. Execution of bonds and coupons — Temporary notes or bonds.
- 15-5-419. Sale of bonds — Statement on face of bond.
- 15-5-420. Obligation of authority — Disposition of proceeds.
- 15-5-421. Bond debt service amount.
- 15-5-422. Moneys for Correction Facilities Construction Fund.

Effective Dates. Acts 1985, No. 340, § 12: Mar. 13, 1985. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that there is an immediate need for the establishment of a Revenue Bond Guaranty Account to secure the payment of

revenue bonds and other financial obligations issued by the Authority, in order that those revenue bonds and other financial obligations may be issued at the lowest possible interest costs. For these reasons, it is declared necessary for the preservation of the public peace, health and safety

that this Act become effective without delay. It is therefore declared that an emergency exists, and this Act shall take effect from the date of its passage and approval."

Acts 1985, No. 505, § 12: Mar. 25, 1985. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that there is an immediate need for the establishment of a Revenue Bond Guaranty Account to secure the payment of revenue bonds and other financial obligations issued by the Authority, in order that those revenue bonds and other financial obligations may be issued at the lowest possible interest costs. For these reasons, it is declared necessary for the preservation of the public peace, health and safety that this Act become effective without delay. It is therefore declared that an emergency exists, and this Act shall take effect from the date of its passage and approval."

Acts 1987, No. 1042, § 8: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present limitations on bond guaranties under the Arkansas Development Finance Authority Bond Guaranty Act of 1985 unnecessarily preclude the Arkansas Development Finance Authority from rendering assistance through its bond guaranty program to developers whose projects are financed through revenue bonds issued by cities, counties and political subdivisions of the State, thereby preventing the Authority from using the bond guaranty program to its fullest potential to promote economic development. It is further found that such limitations can be relaxed without jeopardizing the financial stability of the Authority's bond guaranty program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1988 (3rd Ex. Sess.), No. 31, § 6: Feb. 19, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly that the needs of the state for new correction facilities are critical; that it is necessary and desirable that such new facilities be located in various regions of the state and that action must be taken immediately to provide a means for funding construction of such

regional correction facilities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 184, § 6: Feb. 19, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that there is an urgent need to provide for additional economic development loans to promote the continued expansion of industry within the state by providing loans at the lowest possible interest cost. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Identical Acts 1995, Nos. 197 and 275, § 5: Feb. 9, 1995, and Feb. 13, 1995, respectively. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present annual debt service limitation on the amount of bond guaranties under the Arkansas Development Finance Authority Bond Guarantee Act of 1985 in effect precludes the Authority from making short term, variable rate and working capital loans for economic development which are necessary for the continued expansion of industry within the state; that an acute shortage of working capital financing presently exists which is detrimental to the economic development of the state, and that the economic well being of the citizens of the state of Arkansas will be enhanced by providing short term, variable rate, and working capital loans for economic development at the lowest possible interest cost. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1791, § 13: Apr. 19, 2001. Emergency clause provided: "It is found and determined by the Eighty-Third General Assembly that there is an urgent need to provide additional economic development capital to promote the continued expansion of industry within the state by providing funds for economic growth. Therefore, an emergency is declared to exist and this act being neces-

sary for the immediate preservation of the public peace, health and safety shall be effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 83, § 3: Feb. 8, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that industrial revenue bonds issued by cities and counties are vital for the financing of significant industrial and tourism projects; that

there is an immediate need for this act in order to assure the security of the local revenue bonds guaranteed by the Arkansas Development Finance Authority and issued for the purpose of securing and developing industry and tourism. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-5-401. Title.

This subchapter may be referred to and cited as the "Arkansas Development Finance Authority Bond Guaranty Act of 1985".

History. Acts 1985, No. 340, § 1; 1985, No. 505, § 1; A.S.A. 1947, § 13-2924.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Natural Resources, 24 U. Ark. Little Rock L. Rev. 513.

15-5-402. Legislative findings and declaration of public necessity.

(a) The General Assembly finds:

(1) That there exists severe economic instability in traditional national and international markets for goods and services produced by the citizens of the State of Arkansas. This instability has caused serious economic distress among the citizens of our state and is manifest in the increasing number of business failures and bankruptcies, both personal and corporate, and the extraordinarily high levels of unemployment in agricultural business and industrial enterprises, in the rapidly rising costs of housing for elderly persons and families of low and moderate income, and in the growing unavailability of reliable, affordable, efficient, and environmentally compatible sources of energy for all types of public and private consumption. The continued existence of these conditions is inimical to the public health, welfare, safety, morals, and economic security of the citizens and inhabitants of the state; and

(2) That the economic well-being of the citizens of the State of Arkansas will be enhanced by the providing of economical health care

facilities for the benefit of its citizens, the providing of educational facilities of every nature and kind, and by the providing of water and sewer facilities to provide a source of decent water services and sewer services for its citizens.

(b) For these reasons, the General Assembly finds that there exists in the state an immediate and urgent need to provide the means and methods for providing financing and enhancing and supporting the credit of such financing to:

(1) Restore and revitalize existing agricultural business and industrial enterprises for the purpose of retaining existing employment within the state;

(2) Promote and develop the expansion of existing and the establishment of new agricultural business and industrial enterprises for the purpose of further alleviating unemployment within the state and for providing additional employment;

(3) Promote and target resources of the state to further the development of export trade of Arkansas products for the purpose of the economic development of the state and for providing additional employment therefrom;

(4) Eliminate the shortage of decent, safe, sanitary, and affordable residential housing for elderly persons and families of low and moderate income in the state;

(5) Assure the development of reliable, affordable, efficient, and environmentally compatible sources of energy for all types of public and private consumption;

(6) Provide health care facilities for the citizens and inhabitants of the state;

(7) Provide public improvements facilities for the benefit of the citizens and inhabitants of the state; and

(8) Provide educational facilities for educational institutions within the state.

(c) It is declared to be the public policy and responsibility of this state to promote the health, welfare, safety, morals, and economic security of its inhabitants through the retention of existing employment and alleviation of unemployment in all phases of agricultural business and industrial enterprises, the elimination of the need for decent, safe, sanitary, and affordable housing for elderly persons and persons of low and moderate income, for the development of reliable, affordable, efficient, and environmentally compatible sources of energy for all types of public and private consumption, for health care facilities, for water works and sewer facilities, and for educational facilities for the benefit of educational institutions within the state.

(d) The General Assembly finds that the public policies and responsibilities of the state as set forth in this section cannot be fully attained without the use of public financing and that the public financing can best be provided by the creation of a means of enhancing and supporting the credit of the public financing by establishing a bond guaranty procedure to be administered by the Arkansas Development Finance Authority.

History. Acts 1985, No. 340, § 2; 1985, No. 505, § 2; A.S.A. 1947, § 13-2925.

15-5-403. Definitions.

As used in this subchapter:

(1) "Act" means the Arkansas Development Finance Authority Bond Guaranty Act of 1985, § 15-5-401 et seq.;

(2) "ADFA Act" means the Arkansas Development Finance Authority Act, §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316;

(3) "Amortization payments" means the periodic, that is, monthly, semiannual, annual, etc., payments of interest, whether at a fixed or variable rate, or premium, if any, and installments of principal of qualified bonds as required by the trust indenture relating to the bonds;

(4) "Authority" means the Arkansas Development Finance Authority;

(5) "Board" means the Board of Directors of the Arkansas Development Finance Authority;

(6) "Bond fund" means the Guaranty Bond Fund authorized in this subchapter from which bonds issued by the authority for the purpose of meeting the obligations of the Bond Guaranty Reserve Account are payable;

(7) "Borrower" means the individual, entity, firm, or corporation, whether for profit or nonprofit, or city, county, other political subdivision, or state agency charged with developing the project under the terms of the trust indenture relating to qualified bonds;

(8) "Bond Guaranty Reserve Account" means the account created in this subchapter for the purpose of:

(A) Meeting amortization payments of qualified bonds guaranteed by the authority; and

(B) Enhancing and supporting the credit of those qualified bonds;

(9) "Project" means the project for which the proceeds of qualified bonds are utilized;

(10) "Qualified bonds" means:

(A) Revenue bonds validly issued by the authority in accordance with the provisions of the Arkansas Development Finance Authority Act, §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316;

(B) An obligation issued by the designated investor group under the Venture Capital Investment Act of 2001, § 15-5-1401 et seq.; or

(C) Revenue bonds validly issued by a city or county under the Municipalities and Counties Industrial Development Revenue Bond Law, § 14-164-201 et seq.;

(11) "State" means the State of Arkansas; and

(12) "Supplemental Guaranty Reserve Account" means an account which may be established by the authority for the purpose of enhancing the Bond Guaranty Reserve Account.

History. Acts 1985, No. 340, § 3; 1985, No. 505, § 3; A.S.A. 1947, § 13-2926; Acts 1987, No. 1042, § 1; 1993, No. 185, § 1; 1999, No. 429, § 3; 2001, No. 1791, § 11; 2005, No. 83, § 1; 2007, No. 827, § 133.

A.C.R.C. Notes. Acts 2005, No. 83, § 2, provided: “Arkansas Code § 15-5-403(10) shall apply to guaranties issued prior to February 8, 2005, by the Arkansas Development Finance Authority for revenue bonds validly issued by a city or county under the Municipalities and Counties Industrial Development Revenue Bond

Law, § 14-164-201 et seq., and the guaranties shall not be invalidated based upon the definition of ‘qualified bonds’ in Arkansas Code § 15-5-403 that existed prior to February 8, 2005.”

Amendments. The 2005 amendment added (10)(C).

The 2007 amendment subdivided (8) into (A) and (B); substituted “Enhancing and supporting the credit of those qualified bonds” for “enhancing” in present (B); and made related and stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Natural Resources, 24 U. Ark. Little Rock L. Rev. 513.

15-5-404. Power of authority to grant or deny guaranty bonds.

The Arkansas Development Finance Authority, in addition to all the duties and functions defined in the Arkansas Development Finance Authority Act, §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316, is empowered to approve or deny by majority vote of the Board of Directors of the Arkansas Development Finance Authority the guaranty as provided in this subchapter of amortization payments on qualified bonds, subject to the provisions, restrictions, and conditions set forth in this subchapter.

History. Acts 1985, No. 340, § 4; 1985, No. 505, § 4; A.S.A. 1947, § 13-2927; Acts 1987, No. 1042, § 2.

15-5-405. When bonds may be guaranteed.

Amortization payments on qualified bonds may be guaranteed in instances when:

(1) The Arkansas Development Finance Authority deems the utilization of the guaranty is in the best interest of the economic development of the State of Arkansas;

(2) The total amount of qualified bonds guaranteed at any time under this subchapter will be the lesser of:

(A) One hundred fifty million dollars (\$150,000,000); or

(B) An amount equal to ten (10) times the amount on deposit at that time in the Bond Guaranty Reserve Account;

(3) The borrower involved is not permitted to purchase or own at any time any of such bonds;

(4) The borrower is found to be financially responsible and that sufficient income may reasonably be expected to amortize in an orderly manner amortization payments of the qualified bonds; and

(5)(A) A financial institution participates in the financing necessary to accomplish the project.

(B) However, the authority may waive this requirement, in the exercise of its sound discretion, upon a sufficient showing by the borrower that such participation cannot be obtained or is not feasible because of justifiable circumstances and that the project involved otherwise meets the other conditions of this section and § 15-5-406.

History. Acts 1985, No. 340, § 5; 1985, No. 505, § 5; A.S.A. 1947, § 13-2928; Acts 1987, No. 1042, § 3; 1993, No. 184, § 2; 1995, No. 197, § 1; 1995, No. 275, § 1; 1999, No. 429, § 4.

Publisher's Notes. Acts 1993, No. 184, § 1, provided: "The General Assembly hereby finds:

"(a) That the present limitation on the amount of bond guaranties under the Arkansas Development Finance Authority Bond Guaranty Act of 1985 preclude the Authority from making additional loans for economic development which are necessary for the continued expansion of industry within the state.

"(b) That the economic well being of the citizens of the State of Arkansas will be enhanced by providing additional loans for economic development at the lowest possible interest cost.

"For these reasons, the General Assembly hereby finds that there exists in the state an immediate and urgent need to provide for authorization to the Authority to guarantee additional qualified bonds in order to make additional economic development loans to promote the continued expansion of industry within the state by providing such loans at the lowest possible interest cost."

CASE NOTES

Cited: *Finagin v. Ark. Dev. Fin. Auth.*, 355 Ark. 440, 139 S.W.3d 797 (2003).

15-5-406. Standards and regulations for evaluations.

The Arkansas Development Finance Authority shall promulgate standards and regulations for the evaluation of the financial condition and business history of developers and may require the attachment to each application for guaranty under this subchapter of a financial report and evaluation by an independent certified public accounting firm, in addition to such examination and evaluation as the authority may make, in determining whether the developer meets prescribed minimum standards and qualifications before entering into any guaranty under this subchapter.

History. Acts 1985, No. 340, § 5; 1985, No. 505, § 5; A.S.A. 1947, § 13-2928; Acts 1987, No. 1042, § 3.

15-5-407. Bond Guaranty Reserve Account — Investment of funds.

(a)(1) The Arkansas Development Finance Authority is authorized to establish a Bond Guaranty Reserve Account in an Arkansas financial institution or institutions that are members of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(2) The account shall be in the name of the authority, and the amount thereof in excess of that insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation must be secured by, and the authority is authorized to invest account funds in:

(A) Direct obligations of, or obligations which are guaranteed by, the United States;

(B) Obligations, debentures, notes, or other evidences of indebtedness issued or guaranteed by any of the following:

(i) Bank for Cooperatives;

(ii) Export-Import Bank of the United States;

(iii) Farmers Home Administration;

(iv) Federal Financing Bank;

(v) Federal Home Loan Bank System;

(vi) Federal Home Loan Mortgage Corporation;

(vii) Federal Housing Administration;

(viii) Federal Intermediate Credit Bank;

(ix) Federal Land Bank;

(x) Federal National Mortgage Association; or

(xi) Government National Mortgage Association;

(C) Repurchase agreements with financial institutions acting as principal or agent for securities described in subdivisions (a)(1) and (2) of this section, if the securities are delivered to the authority or trustee on its behalf;

(D) Obligations issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States or temporary notes, preliminary loan notes, or project notes issued by public agencies or municipalities, in each case fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States;

(E) Certificates of deposit or time deposits or similar banking arrangements with a bank or banks insured by the Federal Deposit Insurance Corporation or savings and loan association or associations insured by the Federal Savings and Loan Insurance Corporation; and

(F) Investment agreements, capital notes, or banking arrangements with financial institutions or holding companies thereof approved by the Board of Directors of the Arkansas Development Finance Authority, and to provide for the sale of any such investment and for the reinvestment of the proceeds thereof.

(b)(1) All moneys received by the authority under and pursuant to the provisions of this subchapter shall be deposited as and when received in the account.

(2) It is the intent of this subchapter that idle funds in the account shall be invested as provided in this section in order that maximum interest return may be received by the account.

(c) All moneys now or hereafter deposited in or paid to the authority for deposit in the account are specifically declared to be cash funds, received from sources other than taxes, restricted in their use and shall not be deposited in the State Treasury but shall be deposited in one (1) or more banks, as set forth in this section.

History. Acts 1985, No. 340, § 6; 1985, No. 505, § 6; A.S.A. 1947, § 13-2929.

15-5-408. Evidence to support guaranty — Premium payment.

(a) Each borrower requesting a guaranty under this subchapter shall submit to the Arkansas Development Finance Authority supporting documents, instruments, contractor's costs or estimated cost of improvements, land costs, and other evidence showing conformity with the Arkansas Development Finance Authority Act, §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316, or other law pursuant to which qualified bonds are to be or have been issued.

(b)(1) Each borrower receiving a guaranty under this subchapter shall pay a premium payment or payments to the Bond Guaranty Reserve Account as provided in this section.

(2) The amount and terms of the premium payment shall be determined by the authority taking into consideration the relative degree of risk involved in guaranteeing the project and other appropriate considerations.

History. Acts 1985, No. 340, § 7; 1985, 1987, No. 1042, § 4; 1989, No. 838, § 1; No. 505, § 7; A.S.A. 1947, § 13-2930; Acts 1999, No. 429, § 5.

15-5-409. Review of applications.

(a) All applications filed with the Arkansas Development Finance Authority under the provisions of this subchapter shall first be reviewed by the appropriate designated staff officials of the authority or by a committee consisting of members of the authority for preliminary review and recommendation prior to being submitted for consideration by the authority.

(b) All applications submitted to the authority and all supporting documents, instruments, proposed contracts, estimated costs, or other evidence submitted with the applications shall be confidential and shall not be open to public review, except as provided in this subchapter, and all staff meetings or meetings of the review committee of members of the authority established for the purpose of giving preliminary review of the applications shall be confidential and shall not be open to the public.

(c) Upon conclusion of the preliminary review of each request for a guaranty under this subchapter, if the request for guaranty is submitted to the authority with a recommendation that it be approved, the application and all supporting documents, including the findings and

the recommendations resulting from the staff or review committee, shall be an open public record available for inspection during all regular business hours.

(d) In the event that an application from a borrower requesting a guaranty under this subchapter is not recommended for approval by the authority under this subchapter, that application and all supporting documents, including all findings and recommendations in regard thereto by the staff or review committee, shall continue to be confidential and not open to public inspection.

(e) The borrower shall be notified in writing of any staff or review committee determination that the application is not being submitted to the authority with a recommendation that it be approved. The notice shall advise the borrower that the application will be kept confidential unless the borrower shall file, within thirty (30) days from the date of receipt of the written notice, a petition with the authority requesting that the authority hold a hearing in regard to the application, in which event the application and all supporting documents shall become public information available for public inspection.

(f) The membership of a review committee, when acting in that capacity, shall never be considered to constitute a quorum of the authority for the purpose of approving an application or guaranty under this subchapter.

History. Acts 1985, No. 340, § 7; 1985, No. 505, § 7; A.S.A. 1947, § 13-2930; Acts 1999, No. 429, § 6.

CASE NOTES

Applications.

The term "applications" in this section covers a proposal for a loan guarantee

supported by documentation. *Byrne v. Eagle*, 319 Ark. 587, 892 S.W.2d 487 (1995).

15-5-410. No private right against authority under §§ 15-5-408 and 15-5-409.

No provision of §§ 15-5-408 and 15-5-409 shall be interpreted to create any private right against any member of the Arkansas Development Finance Authority or any member of the staff thereof.

History. Acts 1985, No. 340, § 7; 1985, No. 505, § 7; A.S.A. 1947, § 13-2930.

15-5-411. Grants to fund.

(a) The Arkansas Development Finance Authority is authorized to accept grants to its Bond Guaranty Reserve Account from any state or federal agencies, municipalities, corporations, foundations, individual donees, or authorities, specifically including, but not limited to, allocations from the Treasurer of State as hereinafter provided.

(b)(1) Excluding the interest income classified as special revenues as authorized by §§ 15-41-110 and 27-70-204, the first six million dollars (\$6,000,000) of interest income received by the Treasurer of State during the fiscal year commencing July 1, 1985, from the investment of state funds as authorized by the State Treasury Management Law, § 19-3-201 et seq. [repealed], are declared to be cash funds restricted in their use and dedicated and are to be used solely as authorized by this subchapter.

(2)(A) Such cash funds as received by the Treasurer of State shall not be deposited or deemed to be a part of the State Treasury for purposes of Arkansas Constitution, Article 5, § 29; Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any other constitutional or statutory provision.

(B) The Treasurer of State shall pay such cash funds to the authority for depositing those amounts in the account for the purposes authorized by this subchapter.

(3) The interest earnings transferred directly to the authority are declared to be cash funds restricted in their use and dedicated and to be used solely as authorized in this subchapter.

History. Acts 1985, No. 340, § 8; 1985, No. 505, § 8; A.S.A. 1947, § 13-2931. transferred to in this section, was repealed by Acts 1997, No. 847, § 4. For present law,

A.C.R.C. Notes. The State Treasury Management Law, § 19-3-201 et seq., see § 19-3-501 et seq.

15-5-412. Guaranty agreement provision.

Guaranty agreements entered into by the Arkansas Development Finance Authority under the provisions of this subchapter with respect to qualified bonds issued on behalf of any borrower shall provide, among other things:

(1)(A) That the authority guarantees and the authority is required to use the funds on deposit in the Bond Guaranty Reserve Account to meet amortization payments as guaranteed under this subchapter as the same become due, in the event and to the extent the borrower is unable to meet such payments in accordance with the terms of the bond indenture when called on to do so by the trustee of the bondholders.

(B) Whenever the authority, acting under the terms of the guaranty agreement, deems it necessary to assume the obligation of maintenance of any project, the amortization payments of which the authority has guaranteed under the provisions of this subchapter, the authority may use funds on deposit in the account to pay insurance and maintenance costs required for the preparation of the same and to protect the account from loss or to minimize losses in such manner as deemed necessary and advisable by the authority; and

(2)(A) That the guaranty shall not be a general obligation of the authority or of the State of Arkansas, but shall be a special obligation, and in no event shall the guaranty constitute an indebtedness of the

authority or of the State of Arkansas within the meaning of any constitutional or statutory limitation.

(B) Each guaranty agreement shall have plainly stated on the face of the agreement that the same has been entered into under the provisions of this subchapter, and that it does not constitute an indebtedness of the authority or of the State of Arkansas within any constitutional or statutory limitation, and that the full faith and credit of the State of Arkansas or any of its revenues are not pledged to meet any of the obligations of the authority under the guaranty agreement.

(C) Each agreement shall state that the obligation of the authority under the guaranty shall be limited to the funds available in the account as authorized in this subchapter.

History. Acts 1985, No. 340, § 9; 1985, No. 505, § 9; A.S.A. 1947, § 13-2932; Acts 1987, No. 1042, § 5; 1999, No. 429, § 7.

CASE NOTES

Cited: *Finagin v. Ark. Dev. Fin. Auth.*, 355 Ark. 440, 139 S.W.3d 797 (2003).

15-5-413. Regulations — Remedies.

(a) The Arkansas Development Finance Authority is authorized and directed to conduct such investigation as it may determine necessary for the promulgation of regulations to govern the operation of the guaranty program authorized by this subchapter. The regulations shall include the restriction and conditions imposed by this subchapter, including particularly those set forth in §§ 15-5-405 and 15-5-412, and may include such other and additional provisions, restrictions, and conditions as the authority, after the investigation referred to in this subsection, shall determine to be proper to achieve the most effective utilization of the guaranty program authorized by this subchapter, including, without limitation, a detailing of:

(1) The remedies that must be exhausted by the bondholders or a trustee acting in their behalf prior to calling upon the authority to perform under its guaranty agreement; and

(2) The subrogation or other rights of the authority with reference to the project and its operation in the event the authority makes payment pursuant to the applicable guaranty agreement.

(b) In this regard, the authority is expressly authorized to take such action and enter into such agreements and otherwise take such action as may be necessary to exercise the authority conferred by this subchapter or to evidence the exercise thereof.

(c) The regulations promulgated by the authority to govern the operation of the guaranty program shall contain specific provisions with respect to the rights of the authority to enter, take over, and manage the project and its properties upon default, and shall set forth

the respective rights of the authority and the bondholders in regard thereto.

(d) Such regulations shall be in conformity with this subchapter.

History. Acts 1985, No. 340, § 10; 1985, No. 505, § 10; A.S.A. 1947, § 13-2933.

CASE NOTES

Authority.

Although the authority to require personal guaranties is not explicitly stated, this section gives the Arkansas Development Finance Authority (ADFA) the authority to promulgate regulations to govern the operation of its bond guaranty program and make reasonable lending requirements, including that of personal guaranties; thus, the ADFA did not act

beyond its authority when it required the individual stockholders of a company to enter personal guaranties for specific amounts that were equal to pro rata shares of their stock holdings in the company before the ADFA would guarantee revenue bonds the company obtained to build a plant. *Finagin v. Ark. Dev. Fin. Auth.*, 355 Ark. 440, 139 S.W.3d 797 (2003).

15-5-414. Authority to use money committed to other projects.

(a) If the Arkansas Development Finance Authority shall at any time determine that the moneys in the Bond Guaranty Reserve Account are not or will not be sufficient to meet the obligations of the Bond Guaranty Reserve Account, the authority is authorized to use the necessary amount of any available moneys that it may have which are not needed then or in the foreseeable future for or committed to, other authorized functions and purposes of the authority, and any such moneys so used may be reimbursed out of the Bond Guaranty Reserve Account if and when there are moneys therein available for the purposes.

(b)(1) In addition to the procedure described in subsection (a) of this section, the authority, at its discretion by a majority vote of the Board of Directors of the Arkansas Development Finance Authority, may establish a Supplemental Guaranty Reserve Account by depositing into a separate account moneys from unpledged reserves of the authority, which may include grants from any state or federal agencies, municipalities, corporations, foundations, individual donors, or authorities.

(2) However, upon determination that the Bond Guaranty Reserve Account is sufficient to honor all foreseeable obligations of the guaranty program, the authority may use the funds in the Supplemental Guaranty Reserve Account for other purposes approved by a majority vote of the board.

History. Acts 1985, No. 340, § 11; 1985, No. 505, § 11; A.S.A. 1947, § 13-2934; Acts 1993, No. 185, § 2; 2007, No. 827, § 134.

Amendments. The 2007 amendment

substituted "the Bond Guaranty Reserve Account" for "the Guaranty Reserve Account created and being maintained pursuant to the provisions of this subchapter" in (a).

15-5-415. Issuance of bonds to provide additional moneys.

(a) If at the time there are no other available moneys to meet the then-present or reasonably projected obligations of the Bond Guaranty Reserve Account, the Arkansas Development Finance Authority shall proceed promptly to issue bonds as authorized in this subchapter in such principal amounts as may be necessary to enable the authority to meet, as and when due, all obligations of the account.

(b) The authority to issue bonds shall be a continuing authority that may be exercised from time to time.

(c) Determination of when additional moneys will be needed for the account, the amounts that will be needed, the availability or unavailability of other moneys, the necessity for the issuance of bonds, and the principal amounts of bonds to be issued shall be made solely by the authority in the exercise of its discretion.

History. Acts 1985, No. 340, § 11; 1985, No. 505, § 11; A.S.A. 1947, § 13-2934.

15-5-416. Authorizing resolution.

(a) The bonds shall be authorized by resolution of the Arkansas Development Finance Authority.

(b) The bonds may be issued at one (1) time or in series from time to time. If in series, the initial series shall be designated "Series A" and subsequent series shall be designated in alphabetical order.

(c) All bonds issued under this subchapter, regardless of series, shall be on a parity as to lien, pledge, and security.

(d)(1)(A) The bonds may be coupon bonds payable to bearer or may be registrable as to principal only with interest coupons or may be made exchangeable for bonds of another denomination.

(B) The bonds of another denomination may in turn be either coupon bonds payable to bearer or coupon bonds registrable as to principal only or bonds registrable as to both principal and interest without coupons.

(2) The bonds may:

(A) Be in such form and denomination;

(B) Have such date or dates;

(C) Be stated to mature at such times;

(D) Bear interest payable at such times and at such rate or rates;

(E) Be made payable at such places within or without the State of Arkansas;

(F) Be made subject to such terms of redemption in advance of maturity at such prices; and

(G) Contain such terms and conditions, all as the authority shall determine.

(e) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration of ownership, as set forth in subsection (d) of this section.

(f) The authorizing resolution may contain any other terms, covenants, and conditions that are deemed desirable, including, without limitation, those pertaining to the:

- (1) Maintenance of various funds and reserves;
- (2) Nature and extent of the security;
- (3) Custody and application of the proceeds of the bonds;
- (4) Collection and disposition of revenues; and
- (5) Rights, duties, and obligations of the authority and of the holders and registered owners of the bonds, as the authority shall determine.

History. Acts 1985, No. 340, § 11; 1985, No. 505, § 11; A.S.A. 1947, § 13-2934.

15-5-417. Trust indenture.

(a) The resolution authorizing the issuance of bonds may provide for the execution by the Arkansas Development Finance Authority with a financial institution within or without the State of Arkansas of a trust indenture.

(b) The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the authority, including, without limitation, those pertaining to the maintainance of various funds and reserves, the nature and extent of the security, the custody and application of the proceeds of the bonds, the collection and disposition of revenues, and the rights, duties, and obligations of the authority and of the holders and registered owners of the bonds.

History. Acts 1985, No. 340, § 11; 1985, No. 505, § 11; A.S.A. 1947, § 13-2934.

15-5-418. Execution of bonds and coupons — Temporary notes or bonds.

(a) The bonds shall be executed by the facsimile or manual signature of the Chair of the Arkansas Development Finance Authority and by the facsimile or manual signature of the Secretary of the Arkansas Development Finance Authority.

(b) Interest coupons attached to the bonds shall be executed with the facsimile signature of the chair.

(c) Delivery of the bonds and coupons so executed shall be valid, notwithstanding any change in persons holding such offices occurring after the bonds have been executed.

(d) Temporary notes or bonds conforming generally to the provisions of this subchapter, exchangeable for definitive bonds, may be issued in the discretion of the Arkansas Development Finance Authority.

History. Acts 1985, No. 340, § 11; 1985, No. 505, § 11; A.S.A. 1947, § 13-2934.

15-5-419. Sale of bonds — Statement on face of bond.

(a) The bonds may be sold in such manner, either at public or private sale, and upon such terms as the Arkansas Development Finance Authority shall determine to be reasonable and expedient for effectuating the purposes for which the authority was created.

(b) The bonds may be sold at such price as the authority may accept, including sale at a discount.

(c) It shall be stated on the face of each bond that it has been issued under the provisions of this subchapter.

History. Acts 1985, No. 340, § 11; 1985, No. 505, § 11; A.S.A. 1947, § 13-2934.

15-5-420. Obligation of authority — Disposition of proceeds.

(a) All bonds issued under this subchapter shall be obligations of the Arkansas Development Finance Authority only and shall not be obligations of the State of Arkansas and shall not be secured by a lien on any revenues of the State of Arkansas.

(b) The bonds shall be payable from the Guaranty Bond Fund created by § 15-5-421(e) and the revenues which, pursuant to the provisions of this subchapter, are to be deposited therein.

(c) The net proceeds, being gross proceeds less all expenses of authorizing and issuing the bonds, which shall be first paid out of the proceeds, of all bonds issued under this subchapter shall be deposited into the Bond Guaranty Reserve Account, except accrued interest paid by the purchaser shall be deposited in the Guaranty Bond Fund.

History. Acts 1985, No. 340, § 11; 1985, No. 505, § 11; A.S.A. 1947, § 13-2934; Acts 2007, No. 827, § 135.

Amendments. The 2007 amendment inserted “Bond” preceding “Guaranty Reserve Account” in (c).

15-5-421. Bond debt service amount.

(a) The Arkansas Development Finance Authority shall notify the Treasurer of State when it has determined to issue bonds under this subchapter and the amount that will be needed each month after the bonds are issued to provide for the payment, when due, of interest, principal, trustee’s and paying agent’s fees, and any other necessary expenses, and to provide for the establishing and maintaining of reserves, if the authority determines to establish reserves, which monthly amount is referred to in this section as the “bond debt service amount”.

(b) Excluding the interest income classified as special revenue as authorized by §§ 15-41-110 and 27-70-204, interest income derived from investment of state funds pursuant to the State Treasury Management Law, § 19-3-201 et seq. [repealed], received by the Treasurer of State from and after receipt of the bond debt service amount notice from the authority are declared to be cash funds restricted in their use

and dedicated and are to be used solely as authorized in this subchapter.

(c)(1) The cash funds shall not be placed in the State Treasury or be deemed to be a part of the State Treasury for purposes of Arkansas Constitution, Article 5, § 29; Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any other constitutional or statutory provision.

(2) The Treasurer of State shall deposit the cash funds in a depository other than the State Treasury to the credit of the State Board of Finance Trust Fund Account, a trust fund which shall be maintained by the State Board of Finance so long as any bonds authorized by this section and §§ 15-5-414 — 15-5-420 are outstanding.

(d) From the moneys deposited in the account, the Secretary of the State Board of Finance shall from the first moneys accruing to the benefit of the account pay to the authority the amounts of money required for the bond debt service amount, when needed, if any, and the remaining moneys shall be paid to the Treasurer of State for deposit into the State Treasury as trust funds income to the credit of the Securities Reserve Fund, there to be used for the purposes as authorized by law.

(e) The bond debt service amounts as paid by the Secretary of the Board of Finance to the authority shall be paid directly to the authority for deposit in a special fund of the authority designated the "Guaranty Bond Fund" in a financial institution selected by the authority.

(f) Moneys in the fund shall be used to pay interest on, premium, if any, and principal of the bonds, trustee's and paying agent's fees and to establish and maintain reserves all as shall be specified by the authority in the resolution or trust indenture authorizing and securing the bonds.

(g) The interest earnings, the bond debt service amount, transferred directly to the authority are declared to be cash funds restricted in their use and dedicated and to be used solely as authorized in this subchapter.

(h) So long as any bonds issued under this subsection are unpaid, no changes shall be made in laws of the State of Arkansas which would or could result in the authority not receiving as cash funds amounts of interest equaling the bond debt service amount.

History. Acts 1985, No. 340, § 11; 1985, No. 505, § 11; A.S.A. 1947, § 13-2934.

Management Law, § 19-3-201 et seq., referred to in this section, was repealed by Acts 1997, No. 847, § 4. For present law, see § 19-3-501 et seq.

A.C.R.C. Notes. The State Treasury

15-5-422. Moneys for Correction Facilities Construction Fund.

(a) The Arkansas Development Finance Authority is authorized to accept moneys for the Correction Facilities Construction Fund from any source, including, but not limited to, allocations from the Treasurer of State as provided in this section.

(b)(1) After providing for the exclusion of the interest income classified as special revenues as authorized by §§ 15-41-110 and 27-70-204, the first two million dollars (\$2,000,000) of interest income received each fiscal year by the Treasurer of State beginning with the fiscal year commencing July 1, 1988, and ending with the fiscal year ending June 30, 2008, from the investment of state funds invested as authorized by the State Treasury Management Law, § 19-3-201 et seq. [repealed], are declared to be cash funds restricted in their use and dedicated and are to be used solely as authorized in § 15-5-213.

(2)(A) The cash funds when received by the Treasurer of State shall not be deposited or deemed to be a part of the State Treasury for purposes of Arkansas Constitution, Article 5, § 29; Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any other constitutional or statutory provision.

(B) The Treasurer of State shall pay the cash funds to the authority for deposit in the Correction Facilities Construction Fund for the purposes authorized by § 15-5-213.

(3) The interest earnings transferred directly to the authority are declared to be cash funds restricted in their use and dedicated and to be used solely as authorized in § 15-5-213.

History. Acts 1988 (3rd Ex. Sess.), No. 31, § 2.

A.C.R.C. Notes. The State Treasury Management Law, § 19-3-201 et seq., referred to in this section, was repealed by Acts 1997, No. 847, § 4. For present law, see § 19-3-501 et seq.

Acts 1988 (3rd Ex. Sess.), No. 31, § 5,

provided that the Arkansas Development Finance Authority shall make every effort to study any and all available means of financing to implement this section, specifically including the financing mechanisms of the various state retirement systems.

SUBCHAPTER 5 — ARKANSAS PRIVATE ACTIVITY BOND ALLOCATION ACT OF

1985

SECTION.
15-5-501 — 15-5-511. [Repealed.]

A.C.R.C. Notes. Acts 2001, No. 1044, § 7, provided: “This act is intended to be retroactive to January 1, 2001 for the purposes of conforming Arkansas law to changes in the federal Internal Revenue Code.”

Effective Dates. Acts 2001, No. 1044, § 9: Mar. 22, 2001. Emergency clause provided: “It is found and determined by the General Assembly that there is urgent need to conform the procedures of the allocation of the state private activity volume cap to comport with recent changes to the federal Internal Revenue Code; that the changes are necessary to ensure that

the State of Arkansas may use all the private activity volume cap to which it would be entitled in calendar year 2001 and in succeeding years; and that it is necessary that this act have immediate effect to avoid any impairment to the state’s private activity volume cap. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of

time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall

become effective on the date the last house overrides the veto."

15-5-501 — 15-5-511. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2001, No. 1044, § 8. The subchapter was derived from the following sources:

- 15-5-501. Acts 1985, No. 873, § 1; A.S.A. 1947, § 13-1625.
- 15-5-502. Acts 1985, No. 873, § 2; A.S.A. 1947, § 13-1626.
- 15-5-503. Acts 1985, No. 873, § 11; A.S.A. 1947, § 13-1635.
- 15-5-504. Acts 1985, No. 873, § 10; A.S.A. 1947, § 13-1634.
- 15-5-505. Acts 1985, No. 873, § 3; A.S.A. 1947, § 13-1627.

15-5-506. Acts 1985, No. 873, § 4; A.S.A. 1947, § 13-1628.

15-5-507. Acts 1985, No. 873, § 5; A.S.A. 1947, § 13-1629.

15-5-508. Acts 1985, No. 873, § 6; A.S.A. 1947, § 13-1630.

15-5-509. Acts 1985, No. 873, § 7; A.S.A. 1947, § 13-1631.

15-5-510. Acts 1985, No. 873, § 8; A.S.A. 1947, § 13-1632.

15-5-511. Acts 1985, No. 873, § 9; A.S.A. 1947, § 13-1633.

SUBCHAPTER 6 — ALLOCATION OF STATE CEILING

SECTION.

- 15-5-601. Bonds affected.
- 15-5-602. Delegation of functions.
- 15-5-603. Aggregate percentages allocated.
- 15-5-604. Filing by issuer of reservation of volume cap and notice of issuance of bonds.
- 15-5-605. Special rules for allocation of volume cap for multifamily residential housing bonds.

SECTION.

- 15-5-606. Balance of state ceiling — Carry forwards.
- 15-5-607. Records of filings.
- 15-5-608. Acceptable forms.
- 15-5-609. Filing fee.
- 15-5-610. Allocation of 2008 Housing Act Volume Cap.

A.C.R.C. Notes. Acts 2001, No. 1044, § 7, provided: "This act is intended to be retroactive to January 1, 2001 for the purposes of conforming Arkansas law to changes in the federal Internal Revenue Code."

Publisher's Notes. Acts 1987, No. 900, § 9, provided: "It is the intention of this Act to amend such portions of Act 1062 of 1985, as amended, as are specifically mentioned herein; the remainder of said Act 1062 shall remain in full force and effect as enacted until the same shall be further amended or repealed."

Effective Dates. Acts 1987, No. 900, § 10: Apr. 13, 1987. Emergency clause provided: "It is hereby found and deter-

mined by the General Assembly (1) that there is an urgent need to provide financial assistance to Arkansas educational institutions and that the Arkansas Development Finance Authority possesses the expertise and resources to provide such assistance; (2) that the power to create nonprofit corporations will greatly assist the Arkansas Development Finance Authority in carrying out its duties under this Act; (3) that there is an urgent need to modify the prior notification and other requirements of Section 6.02 of Act 1062 of 1985, as amended, in order that the Arkansas Development Finance Authority may, when necessary, move expeditiously to take advantage of favorable credit con-

ditions in issuing bonds to provide pooled or consolidated financings for certain projects and activities; and (4) in certain cases, the Arkansas Development Finance Authority may benefit by issuing bonds denominated in currencies other than the currency of the United States of America. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2001, No. 1044, § 9: Mar. 22, 2001. Emergency clause provided: “It is found and determined by the General Assembly that there is urgent need to conform the procedures of the allocation of the state private activity volume cap to comport with recent changes to the federal Internal Revenue Code; that the changes are

necessary to ensure that the State of Arkansas may use all the private activity volume cap to which it would be entitled in calendar year 2001 and in succeeding years; and that it is necessary that this act have immediate effect to avoid any impairment to the state’s private activity volume cap. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

15-5-601. Bonds affected.

(a) This subchapter shall be effective for the calendar year 2001 and thereafter and may be relied upon by issuers of affected bonds, beneficiaries of the proceeds from and owners of the bonds, and other participants in the issuance of the bonds with respect to all affected bonds issued on and after January 1, 2001.

(b) As used in this subchapter:

(1) “Affected bonds” means bonds subject to the “state ceiling”; and

(2) “Qualified housing issues” shall have the same meaning as used in section 146(d)(5)(B)(ii) of the Internal Revenue Code of 1986, as it existed on January 1, 2009;

(3) “State ceiling” shall have the same meaning as used in section 146 of the Internal Revenue Code of 1986 as it existed on January 1, 2001; and

(4) “2008 Housing Act Volume Cap” means the temporary increase in annual private activity volume cap provided to the state by Pub. L. No. 110-289.

History. Acts 1987, No. 900, § 8; 2001, No. 1044, § 1; 2009, No. 6, § 1.

A.C.R.C. Notes. Acts 2001, No. 1044, § 7, provided: “This act is intended to be retroactive to January 1, 2001 for the purposes of conforming Arkansas law to changes in the federal Internal Revenue Code.”

Publisher’s Notes. Subsection (d) is not subdivided as stated in the reference

to “section 146(d)(5)(B)(ii) of the Internal Revenue Code of 1986” in (b)(2).

Amendments. The 2009 amendment inserted (b)(2) and (4), redesignated the remaining subsections accordingly, and made related changes.

U.S. Code. Section 146 of the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 146.

15-5-602. Delegation of functions.

The President of the Arkansas Development Finance Authority may delegate in writing functions under this subchapter to other officers and employees within the Arkansas Development Finance Authority.

History. Acts 1987, No. 900, § 8.

15-5-603. Aggregate percentages allocated.

(a) The aggregate of the state ceiling for the State of Arkansas for each calendar year shall be allocated on a percentage basis as follows:

(1) The Arkansas Development Finance Authority is allocated for calendar year 2001 and for each year thereafter the following amounts for the purposes stated:

(A) For multifamily residential housing, ten percent (10%) of the aggregate state ceiling;

(B) For single family residential housing, seventeen percent (17%) of the aggregate state ceiling; and

(C) For industrial development, thirty-three percent (33%) of the aggregate state ceiling;

(2) However, the Arkansas Development Finance Authority, by resolution of its board of directors, may provide that the total amount of sixty percent (60%) of the aggregate state ceiling allocated to the authority for calendar years 2001 and thereafter may be redistributed among the purposes stated in amounts other than those set forth in this subsection; and

(3) The Arkansas Student Loan Authority is allocated ten percent (10%) of the aggregate state ceiling for calendar year 2001 and for each calendar year thereafter for bonds issued to provide student loans.

(b) To the extent any amounts of the aggregate state ceiling allocated pursuant to subsection (a) of this section are not used prior to September 1 in any year, these amounts shall be allocated pursuant to subsection (c) of this section.

(c) The remaining thirty percent (30%) of the aggregate state ceiling plus any amounts not used by September 1 in each year pursuant to subsection (b) of this section is allocated to all other affected bonds issued by all issuers of such bonds within the state, regardless of whether such issuers are at the state level or at the local level, pursuant to rules and regulations established by the Arkansas Development Finance Authority promulgated in compliance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., in the amounts set forth in filings made by or on behalf of issuers.

History. Acts 1987, No. 900, § 8; 2001, No. 1044, § 2.

A.C.R.C. Notes. Acts 2001, No. 1044, § 7, provided: "This act is intended to be

retroactive to January 1, 2001 for the purposes of conforming Arkansas law to changes in the federal Internal Revenue Code."

15-5-604. Filing by issuer of reservation of volume cap and notice of issuance of bonds.

(a) In order to reserve an allocation of the state ceiling to an issue of affected bonds prior to the issuance by delivery and payment of those bonds, a reservation filing by or on behalf of the issuer must be made with the President of the Arkansas Development Finance Authority not more than sixty (60) days prior to the projected issuance date of the affected bonds. Each reservation filing shall be assigned a priority number in accordance with § 15-5-607.

(b)(1) Once accepted as a reservation of volume cap by the president pursuant to the rules and regulations of the Arkansas Development Finance Authority, a reservation filing shall be effective to allocate state volume cap for purposes of compliance with federal tax law, subject only to the timely issuance of the affected bonds.

(2) The bonds shall be issued by delivery and payment within sixty (60) days after the date that the reservation filing is accepted as effective to allocate volume cap, unless:

(A) The deadline is extended pursuant to subsection (e) of this section;

(B) The reservation is accepted as effective to allocate volume cap on or after November 1, by December 31 of the applicable calendar year; or

(C) The issuer is granted permission by the president to carry forward the allocation pursuant to § 15-5-606.

(c) The issuance of the affected bonds shall be evidenced by the filing of a notice of issuance with the president. However, the failure to file such notice of issuance shall not affect the allocation of volume cap to bonds that have been otherwise timely issued pursuant to subsection (b) of this section.

(d)(1) For reservation filings received by the president prior to September 1 of each calendar year, volume cap shall be reserved and allocated based on the priority number assigned in accordance with subsection (a) of this section.

(2) For reservation filings made on or after September 1 of each calendar year, or for reservation filings made once a volume cap shortage has been declared in accordance with the rules and regulations of the authority, volume cap shall be reserved and allocated in accordance with the rules and regulations of the authority.

(3) The authority shall promulgate rules and regulations to provide for the declaring of a volume cap shortage and to reserve and allocate volume cap in cases of a shortage declaration in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e)(1) In the event that an allocation expires by reason of failure to issue the bonds within the applicable period stated in subsection (b) of this section, a new filing shall be made that shall be accorded priority in accordance with its new time of filing.

(2)(A) The president may extend the applicable period for issuing the bonds by up to sixty (60) days in accordance with the rules and regulations promulgated by the authority.

(B) The rules and regulations may provide for the payment by the issuer of a fee to extend the issuance period and may provide for the filing of an explanatory statement as to the reasons the bonds were not issued during the original applicable period.

(C) The authority shall promulgate rules and regulations to provide for extending the applicable period for issuing the bonds in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1987, No. 900, § 8; 2001, No. 1044, § 3; 2007, No. 141, § 1.

A.C.R.C. Notes. Acts 2001, No. 1044, § 7, provided: "This act is intended to be retroactive to January 1, 2001 for the purposes of conforming Arkansas law to changes in the federal Internal Revenue Code."

Amendments. The 2007 amendment inserted (b)(2), (b)(2)(C), and (c), and redesignated the remaining subdivisions ac-

cordingly; in (b), rewrote (b)(1), substituted "§ 15-5-604(e)" for "§ 15-5-604(d)" in (b)(2)(A), and substituted "accepted as effective to allocate volume cap on or after November 1" for "filed after November 1" in (b)(2)(B); in (e)(1), substituted "an allocation" for "a reservation filing so made," and deleted "or to give the required notice" following "issue the bonds"; substituted "a fee" for "an additional fee" in (e)(2)(B); and made related and stylistic changes.

15-5-605. Special rules for allocation of volume cap for multifamily residential housing bonds.

(a) Notwithstanding § 15-5-604(c), the priority allocation of volume cap to multifamily residential housing bonds, whether the bonds are issued by the Arkansas Development Finance Authority or by any other issuer, shall not be determined based solely on the date of the reservation filing.

(b) Multifamily residential housing bonds shall be granted a priority based upon the decision of the authority in accordance with rules and regulations establishing criteria to determine priority for multifamily residential housing bonds.

(c) The rules and regulations may provide for the priority of the allocation to be based upon:

(1) The need for multifamily residential housing in the particular area of the state in which the project is to be located;

(2) The characteristics of the proposed project; and

(3) Any other factors as determined necessary by the authority.

(d) The authority shall promulgate rules and regulations to establish criteria to determine priority for multifamily residential housing bonds in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1987, No. 900, § 8; 2001, No. 1044, § 4.

A.C.R.C. Notes. Acts 2001, No. 1044, § 7, provided: "This act is intended to be

retroactive to January 1, 2001 for the purposes of conforming Arkansas law to changes in the federal Internal Revenue Code."

15-5-606. Balance of state ceiling — Carry forwards.

(a)(1)(A) Volume cap that has not been allocated by the end of the calendar year may be allocated by the President of the Arkansas Development Finance Authority for one (1) or more carryforward purposes, and the issuer receiving such allocation shall carry forward the allocation of volume cap in the manner described in subdivision (a)(2) of this section.

(B)(i) Volume cap that has been allocated prior to the end of the calendar year to another issuer by the Arkansas Development Finance Authority but as to which no bonds have been issued may be carried forward only upon the approval of the president.

(ii) The issuer seeking to carry forward an allocated volume cap must request the written permission of the president.

(iii) The president may require the issuer to submit such information as he or she deems necessary to determine if approval of the request should be granted.

(iv) If the president approves the carryforward request, permission to carry forward the volume cap shall be evidenced by a letter from the president, and the issuer shall carry forward the volume cap in the manner described in subdivision (a)(2) of this section.

(v) If the president does not approve the carryforward request, the allocation shall be deemed to have expired as of the end of the calendar year, and the volume cap related to the expired allocation may be allocated by the president as set forth in subdivision (a)(1)(A) of this section.

(2)(A) In order to carry forward volume cap allocated pursuant to subdivision (a)(1)(A) or subdivision (a)(1)(B) of this section, the issuer, whether such issuer is the authority or another issuer, must make a valid carryforward election statement under the provisions of federal tax law.

(B) The carryforward election statement must set forth the information required and must be filed at the place, in the manner, and by the date required for timely filing of a carryforward election statement under federal tax law as set forth in any federal statute, or in any regulation or published notice or ruling of the Internal Revenue Service.

(3) A copy of any federal carryforward election statement shall be filed with the president at the same time it is filed with the Internal Revenue Service.

(b) Carryforwards elected with respect to any purpose shall be used in order of the calendar years in which they arose. Carryforward purposes shall be those permitted by section 146(f)(5) of the Internal Revenue Code of 1986.

(c)(1) Carryforwards previously elected with respect to any purpose pursuant to the provisions of Section 4 of the Proclamation of the Governor dated November 30, 1986, for the calendar year ending December 31, 1986, are ratified and confirmed.

(2) Carryforwards elected prior to January 2, 2007, with respect to any purpose pursuant to the provisions of the law then in effect are ratified and confirmed.

History. Acts 1987, No. 900, § 8; 2001, No. 1044, § 5; 2007, No. 141, § 2.

A.C.R.C. Notes. Acts 2001, No. 1044, § 7, provided: "This act is intended to be retroactive to January 1, 2001 for the purposes of conforming Arkansas law to changes in the federal Internal Revenue Code."

Amendments. The 2007 amendment,

in (a), inserted (a)(1)(B) and (a)(2) and redesignated the remaining subdivisions accordingly, rewrote (a)(1)(A) and present (a)(3); and rewrote (c)(2).

U.S. Code. Section 146(f)(5) of the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 146(f)(5).

15-5-607. Records of filings.

(a) The Arkansas Development Finance Authority shall maintain continuous cumulative records of the filings made under this subchapter.

(b) For such a purpose, the filings under this subchapter shall be dated and numbered by the President of the Arkansas Development Finance Authority in the order made.

(c) The president shall attempt to accept filings in the order in which completed applications are received.

History. Acts 1987, No. 900, § 8.

15-5-608. Acceptable forms.

Filings made under this subchapter and notice of issuance of bonds given under this subchapter and carryforward elections shall be substantially in the forms established by the Arkansas Development Finance Authority.

History. Acts 1987, No. 900, § 8.

15-5-609. Filing fee.

The Arkansas Development Finance Authority may charge each issuer of affected bonds a filing fee for establishing its compliance with the Internal Revenue Code of 1986 by appropriate resolution of the authority and may modify its filing fee from time to time by subsequent resolution of the authority.

History. Acts 1987, No. 900, § 8.

U.S. Code. The Internal Revenue Code

of 1986, referred to in this section, is codified as 26 U.S.C. § 1 et seq.

15-5-610. Allocation of 2008 Housing Act Volume Cap.

(a) The 2008 Housing Act Volume Cap shall be allocated one hundred percent (100%) to the Arkansas Development Finance Authority to finance qualified housing issues.

(b) The authority may carry forward the 2008 Housing Act Volume Cap as provided in Section 146(f)(6) of the Internal Revenue Code of 1986, as in effect on January 1, 2009.

(c) The authority, by resolution of its board of directors, may assign any portion of the 2008 Housing Act Volume Cap to one (1) or more other bond issuers in the state for the purpose of financing qualified housing issues.

History. Acts 2009, No. 6, § 2.

U.S. Code. Section 146 of the Internal

Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 146.

SUBCHAPTER 7 — ARKANSAS DEVELOPMENT FINANCE AUTHORITY SMALL BUSINESS ACT OF 1989

SECTION.

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SECTION.

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15-5-711. Grants to fund.

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15-5-713. Funding of qualified investments.

Publisher's Notes. Acts 1993, No. 183, § 1, provided: "Legislative findings and declaration of public necessity. The General Assembly hereby finds:

"(a) That the current approval process for loans under the Small Business Revolving Loan Fund presents difficulties for execution with other lending institutions eligible for participation in the project.

"(b) That making small business loans for economic development is necessary for the continued expansion of business within the state.

"(c) That the economic well being of the citizens of the State of Arkansas will be enhanced by providing additional loans for economic development.

"For these reasons, the General Assembly hereby finds that there exists in the state an immediate and urgent need to allow the Authority certain procedural changes to facilitate the origination of economic development loans from the Small Business Revolving Loan Fund."

Effective Dates. Acts 1989, No. 623, § 10: July 1, 1989. Emergency clause pro-

vided: "It is hereby found and determined by the Seventy-Seventh General Assembly that there is an urgent need to provide affordable financing to small business enterprises in Arkansas and that the Arkansas Development Finance Authority possesses the expertise and resources to establish and administer a Small Business Revolving Loan Fund Program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1989."

Acts 1991, Nos. 775 and 874, § 10: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that there is an urgent need to provide financing, especially in rural areas, for technology-oriented small business enterprises, minority owned small business enterprises and that such financing can be provided by the Arkansas Development Finance Authority through

the Small Business Revolving Loan Program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of public peace, health, and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 183, § 8: Feb. 19, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that there is an urgent need to facilitate additional economic development loans to promote the continued expansion of industry within the state by providing loans at the lowest possible interest cost. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1791, § 13: Apr. 19, 2001. Emergency clause provided: "It is found and determined by the Eighty-Third General Assembly that there is an urgent need to provide additional economic development capital to promote the continued expansion of industry within the state by providing funds for economic growth. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-5-701. Title.

This subchapter may be referred to and cited as the "Arkansas Development Finance Authority Small Business Act of 1989".

History. Acts 1989, No. 623, § 1.

Cross References. Arkansas Develop-

ment Finance Authority Act, § 15-5-201 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Natural Resources, 24 U. Ark. Little Rock L. Rev. 513.

15-5-702. Legislative findings and declaration of public necessity.

(a) The General Assembly finds:

(1) That there exists severe economic instability in traditional national and international markets for goods and services produced by the citizens of the State of Arkansas. This instability has caused serious economic distress among the citizens of the state and is manifest in the increasing number of business failures and bankruptcies, both personal and corporate, and the extraordinarily high levels of unemployment. The continued existence of these conditions is inimical to the public health, welfare, safety, morals, and economic security of the citizens and inhabitants of the state;

(2) That the economic well-being of the citizens of the State of Arkansas will be enhanced by providing affordable financing to small business enterprises in Arkansas;

(3) That there exists a need to leverage private capital, to import capital into Arkansas, and to expand the permanent presence of investment talent in Arkansas;

(4) That the state needs to forge strong coinvestment relationships with regional and national investors that best address market inefficiencies in Arkansas; and

(5) There exists a need to attract venture capital pools, companies, or partnerships and to expand the range and variety of capital products available through these entities to Arkansas small businesses.

(b) For these reasons, the General Assembly finds that there exists in the state an immediate and urgent need to provide the means and methods for providing financing and enhancing and supporting the credit of that financing to:

(1) Promote and develop the expansion of existing and the establishment of new small business enterprises for the purpose of further alleviating unemployment within the state and for providing additional employment;

(2) Promote and target the resources of the state by leveraging available loan funds through participation with local financial institutions in Arkansas and with agencies of the United States Government;

(3) Promote and target resources of the state to further the development of export trade of Arkansas products for the purpose of the economic development of the state and for providing additional employment therefrom; and

(4) Target resources of the state toward the development and expansion, especially in rural areas, of technology-oriented small business enterprises, minority-owned small business enterprises, and agriculture-related small business enterprises.

(c) It is declared to be the public policy and responsibility of this state to promote the health, welfare, safety, morals, and economic security of its inhabitants through the retention of existing employment and alleviation of unemployment in all phases of agricultural business and industrial enterprises.

(d) The General Assembly finds that the public policies and responsibilities of the state as set forth in this section cannot be fully attained without the use of public financing and that the public financing can best be provided by the creation of a Small Business Revolving Loan Fund.

(e) It is the purpose of this subchapter to establish programs under which the State of Arkansas, through the Arkansas Development Finance Authority, will provide fiscal resources to assist small business capital development and to assist Arkansas financial institutions to overcome obstacles and constraints in meeting the full range of economically sound financing needs of Arkansas small businesses.

History. Acts 1989, No. 623, § 2; 1991, No. 775, § 1; 1991, No. 874, § 1; 1995, No. 1329, §§ 1, 2.

15-5-703. Definitions.

As used in this subchapter:

(1) "Agencies of the United States Government" means federal agencies empowered to make direct loans and provide guaranties backed by the United States Government;

(2) "Amortization payments" means periodic, i.e., monthly, semianual, annual, etc., payment of interest on and installments of principal of loans guaranteed by the Small Business Revolving Loan Fund;

(3) "Arkansas Development Finance Authority guaranty" means:

(A) A special obligation of the Small Business Revolving Loan Fund; or

(B) A special obligation of the Bond Guaranty Reserve Account as defined in § 15-5-403(8);

(4) "Arkansas Development Finance Authority guaranty premium payment" means a premium payment or payments made to the Bond Guaranty Reserve Account by borrowers receiving guaranties;

(5) "Arkansas Development Finance Authority loans" means direct loans from the Small Business Revolving Loan Fund or from direct loans made by the authority in accordance with provisions of the Arkansas Development Finance Authority Act, §§ 15-5-101—15-5-106, 15-5-201—15-5-211, 15-5-213, and 15-5-301—15-5-316;

(6) "Authority" means the Arkansas Development Finance Authority;

(7) "Board" means the Board of Directors of the Arkansas Development Finance Authority;

(8) "Direct fund" means the total dollar amount of cash funds of the authority dedicated and made available by the board for qualified investments to invest exclusively in Arkansas small businesses, preferably as a coinvestor with other professional venture investors;

(9) "Local financial institutions" means state and local agencies, banks, Arkansas savings and loans, Arkansas development finance corporations, and Arkansas certified development corporations;

(10) "Project" means the project for which proceeds of authority loans are utilized;

(11) "Qualified investment" means an investment, in whatever form, in the capital structure of a small business through the direct fund or through cooperation with other investment entities;

(12) "Small business" means business enterprises with fewer than fifty (50) employees and less than one million dollars (\$1,000,000) in gross sales or receipts;

(13)(A) "Small business" means business enterprises with fewer than five hundred (500) employees and less than eighty million dollars (\$80,000,000) in gross sales or receipts.

(B) This definition is subject to change by standards and regulations promulgated by the authority;

(14) "Small business investment company" means an entity which is qualified as such under the provisions of section 301 of the Small

Business Investment Act of 1958, 15 U.S.C. § 681, and the regulations promulgated thereunder;

(15) "Small Business Loan Committee" means a committee comprised of authority staff members or board members, or both, appointed by the Chair of the Board of Directors of the Arkansas Development Finance Authority and approved by a majority vote of the Board of Directors of the Arkansas Development Finance Authority. The committee is to comply with standards and requirements set by the board in carrying out its function;

(16) "Small-business person" means:

(A) An individual, firm, or corporation, whether for profit or nonprofit, charged with developing the project; or

(B) An individual, firm, partnership, limited liability company, corporation, or any other business entity in any form which owns and operates a small business;

(17) "Small Business Revolving Loan Fund" means the fund created under this subchapter for the purpose of making direct loans and meeting amortization payments of loans guaranteed by the Small Business Revolving Loan Fund;

(18) "Specialized small business investment company" means an entity which is qualified as such under the provisions of section 301(d) of the Small Business Investment Act of 1958, 15 U.S.C. § 681(d) [repealed], and the regulations promulgated thereunder;

(19) "State" means the State of Arkansas; and

(20) "Title IX revolving loan funds" means revolving loan funds operated by regional planning and development districts and authorized by Title IX of the Public Works and Economic Development Act of 1965.

History. Acts 1989, No. 623, § 3; 1991, No. 775, § 2; 1991, No. 874, § 2; 1993, No. 183, § 2; 1995, No. 1329, § 3; 2001, No. 1791, § 12.

A.C.R.C. Notes. As enacted by Acts 1989, No. 623, § 3, this section contained an additional definition which read as follows: "(a) 'Act' shall mean the Arkansas Development Finance Authority Bond

Small Business Act of 1989."

Publisher's Notes. As to legislative findings and declaration of public necessity in Acts 1993, No. 183, see Publisher's Notes at the beginning of this subchapter.

U.S. Code. Title IX of the Public Works and Economic Development Act of 1965, referred to in this section, was repealed by Pub. L. No. 105-393.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Natural Resources, 24 U. Ark. Little Rock L. Rev. 513.

15-5-704. Duty of authority.

The Arkansas Development Finance Authority, in addition to all the duties and functions defined in the Arkansas Development Finance Authority Act, §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316, is empowered to approve or deny by majority vote of the Board of Directors of the Arkansas Development Finance

Authority the applications for direct loans and guaranties of obligations and qualified investments, except that, at the discretion of the board, approvals for loans up to any limit the board shall specify may be approved by the Small Business Loan Committee. The committee shall report all such actions taken at the next meeting of the board.

History. Acts 1989, No. 623, § 4; 1993, No. 183, § 3; 1995, No. 1329, § 4.

findings and declaration of public necessity in Acts 1993, No. 183, see Publisher's

Publisher's Notes. As to legislative

Notes at the beginning of this subchapter.

15-5-705. Funding or guarantee of loans — Conditions.

(a) Loans may be guaranteed when:

(1) The Arkansas Development Finance Authority deems the utilization of a loan guaranty in the best interest of the economic development of the State of Arkansas;

(2) The amount in the Small Business Revolving Loan Fund, excluding the unpaid portion of any direct loan made from the fund in accordance with subsection (b) of this section, is sufficient to pay current calendar debt service requirements on all guaranteed loans currently outstanding plus the loan to be guaranteed;

(3) The small-business person is found to be financially responsible and demonstrates that sufficient income may reasonably be expected to be available to pay as they come due the amortization payments of the loan and all normal operating expenses of the business; and

(4)(A) A financial institution agrees to participate in the financing package necessary to accomplish the project.

(B) Participation may range from ten percent (10%) to fifty percent (50%) depending upon the project and the requirement for funding.

(b) A direct loan may be made by the authority from the fund when:

(1) The authority deems the making of a direct loan to be in the best interest of the economic development of the State of Arkansas;

(2) The small-business person is found to be financially responsible and demonstrates that sufficient income may be reasonably expected to be available to pay as they come due the amortization payments on the loan and the normal operating expenses of the business; and

(3) The assets remaining in the fund, excluding the unpaid portion of any direct loan held by the fund, shall not be reduced by the making of the loan to an amount less than is required by subdivision (a)(2) of this section for all then-outstanding guaranteed loans.

(c) In all events, the authority shall not make direct loans to small business persons which, in the aggregate, exceed at any one (1) time thirty percent (30%) of the total assets, including the unpaid portion of all direct loans made from the fund, of the fund.

History. Acts 1989, No. 623, § 5; 1991, No. 775, § 3; 1991, No. 874, § 3.

15-5-706. Evaluation of small-business persons.

(a) The Arkansas Development Finance Authority shall promulgate standards and regulations for the evaluation of the financial condition and business history of the small-business person and may require the attachment to each application for a loan or guaranty or qualified investment under this subchapter of a financial report and evaluation by an independent certified public accountant firm in addition to such examination and evaluation as the authority may make in determining whether the small-business person meets prescribed minimum standards and qualifications before entering into any guaranty under this subchapter.

(b) The authority shall also be empowered to promulgate rules and regulations for the handling of disbursements from and payments to the Small Business Revolving Loan Fund and the direct fund and for the management and implementation of programs provided in this subchapter, specifically including the establishment of amounts to be made available for small businesses in rural areas.

History. Acts 1989, No. 623, § 5; 1991, No. 775, § 4; 1991, No. 874, § 4; 1995, No. 1329, § 5.

15-5-707. Small Business Revolving Loan Fund — Investment of funds.

(a)(1) The Arkansas Development Finance Authority is authorized to establish a Bond Guaranty Reserve Account, sometimes referred to in this subchapter as the “account”, in an Arkansas financial institution or institutions that are members of the Federal Deposit Insurance Corporation.

(2) The account shall be in the name of the authority, and the amount thereof in excess of that insured by the Federal Deposit Insurance Corporation must be secured by, and the authority is authorized to invest account funds in:

(A) Direct obligations of or obligations which are guaranteed by the United States;

(B) Obligations, debentures, notes, or other evidences of indebtedness issued or guaranteed by any of the following:

- (i) Bank for Cooperatives;
- (ii) Export-Import Bank of the United States;
- (iii) Farmers Home Administration;
- (iv) Federal Financing Bank;
- (v) Federal Home Loan Bank System;
- (vi) Federal Home Loan Mortgage Corporation;
- (vii) Federal Housing Administration;
- (viii) Federal Intermediate Credit Bank;
- (ix) Federal Land Bank;
- (x) Federal National Mortgage Association; or
- (xi) Government National Mortgage Association;

(C) Repurchase agreements with financial institutions acting as principal or agent for securities described in subdivisions (a)(1) and (2) of this section, if the securities are delivered to the authority or trustee on its behalf;

(D) Obligations issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States or temporary notes, preliminary loan notes, or project notes issued by public agencies or municipalities, in each case fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States;

(E) Certificates of deposit or time deposits or similar banking arrangements with a bank or banks insured by the Federal Deposit Insurance Corporation; and

(F) Investment agreements, capital notes, or banking arrangements with financial institutions or holding companies thereof approved by the Board of Directors of the Arkansas Development Finance Authority, and to provide for the sale of any such investment and for the reinvestment of the proceeds thereof.

(b)(1) All moneys received by the authority under and pursuant to the provisions of this subchapter shall be deposited as and when received in the Small Business Revolving Loan Fund.

(2) It is the intent of this subchapter that idle funds in the fund shall be invested as provided in this section, in order that maximum interest return may be received by the fund.

(c) All moneys now or hereafter deposited in or paid to the authority for deposit in the fund are specifically declared to be cash funds, received from sources other than taxes, restricted in their use and shall not be deposited in the State Treasury but shall be deposited in one (1) or more banks as set forth in subsection (a) of this section.

History. Acts 1989, No. 623, § 6; 1991, No. 775, § 5; 1991, No. 874, § 5.

15-5-708. Applications — Supporting documents.

Each small-business person requesting a loan or guaranty or qualified investment under this subchapter shall submit to the Arkansas Development Finance Authority an application, supporting documents, and instruments as may be required by the rules and regulations promulgated by the authority pursuant to this subchapter and approved by a majority vote of the Board of Directors of the Arkansas Development Finance Authority.

History. Acts 1989, No. 623, § 7; 1993, No. 183, § 4; 1995, No. 1329, § 6. findings and declaration of public necessity in Acts 1993, No. 183, see Publisher's

Publisher's Notes. As to legislative Notes at the beginning of this subchapter.

15-5-709. Applications — Review — Confidentiality and public disclosure — Notice.

(a) All applications filed with the Arkansas Development Finance Authority under the provisions of this subchapter shall first be reviewed by the appropriate designated staff officials of the authority or by a committee consisting of members of the authority for preliminary review and recommendation prior to being submitted for consideration by the authority.

(b) All applications submitted to the authority and all supporting documents, instruments, proposed contracts, estimated costs, or other evidence submitted therewith shall be confidential and shall not be open to public review except as provided in this section, and all staff meetings or meetings of the review committee of members of the authority established for the purpose of giving preliminary review of such applications shall be confidential and shall not be open to the public.

(c) Upon conclusion of the preliminary review of each request under this subchapter, if the request is submitted to the authority with a recommendation that it be approved, the application and all supporting documents, including the findings and the recommendations resulting from the staff or review committee thereof, shall be an open public record available for inspection during all regular business hours.

(d) In the event that an application from a small-business person under this subchapter is not recommended for approval by the authority under this subchapter, that application and all supporting documents, including all findings and recommendations in regard thereto by the staff or review committee, shall continue to be confidential and not open to public inspection.

(e)(1) The small-business person shall be notified in writing of any staff or review committee determination that the application is not being submitted to the authority with a recommendation that it be approved.

(2) The notice shall advise the small-business person that the application will be kept confidential unless within thirty (30) days from the date of receipt of the written notice the small-business person files a petition with the authority requesting that the authority hold a hearing in regard to the application. In that event, the application and all supporting documents shall become public information available for public inspection.

(f) The membership of a review committee, when acting in that capacity, shall never be considered to constitute a quorum of the authority for the purpose of approving an application for guaranty under this subchapter.

History. Acts 1989, No. 623, § 7.

15-5-710. Liability of authority's members and staff.

No provision of §§ 15-5-708 and 15-5-709 shall be interpreted to create any private right against any member of the Arkansas Development Finance Authority or any member of the staff thereof.

History. Acts 1989, No. 623, § 7.

15-5-711. Grants to fund.

The Arkansas Development Finance Authority is authorized to accept grants to its Small Business Revolving Loan Fund from any state or federal agencies, municipalities, corporations, foundations, individual donees, or authorities.

History. Acts 1989, No. 623, § 8.

15-5-712. Power to make grants and loans.

The Arkansas Development Finance Authority is authorized to make grants, direct loans, or loan guaranties to new or existing Title IX revolving loan funds, small business investment companies, or specialized small business investment companies.

History. Acts 1991, No. 775, § 6; 1991, Public Works and Economic Development Act of 1965, which was repealed by Pub. L. No. 874, § 6.

Publisher's Notes. The reference to Title IX probably means Title IX of the No. 105-393.

15-5-713. Funding of qualified investments.

(a)(1) The Arkansas Development Finance Authority is authorized to make, from cash funds held by the authority for such a purpose, qualified investments upon such terms and conditions and for such periods of time as shall be recommended by the President of the Arkansas Development Finance Authority and approved by the Board of Directors of the Arkansas Development Finance Authority.

(2) Before approving a qualified investment, the board shall determine that the making of the qualified investment furthers the purposes of this subchapter as included in § 15-5-702 and is in the best interest of the state.

(b) The authority shall not make qualified investments in any one (1) small business, in the aggregate, exceeding five hundred thousand dollars (\$500,000) or ten percent (10%) of the direct fund, whichever is smaller.

History. Acts 1995, No. 1329, § 7.

SUBCHAPTER 8 — RURAL AND AGRICULTURAL DEVELOPMENT**SECTION.**

- 15-5-801. Rural development generally.
- 15-5-802. Division of Agriculture Development.
- 15-5-803. Duties of division.

SECTION.

- 15-5-804. Advisory capacity of division.
- 15-5-805. Catfish Industry Development Program.

A.C.R.C. Notes. Acts 1989, No. 885, § 1, repealed former §§ 15-4-214 — 15-4-217, while Acts 1989, No. 885, § 3, enacted this subchapter. The effect of Acts 1989, No. 885 was to transfer the Division of Agriculture Development from the Arkansas Industrial Development Commission to the Arkansas Development Finance Authority.

Effective Dates. Acts 1989, No. 885, § 6: Mar. 22, 1989. Emergency clause pro-

vided: "It is hereby found and declared that there is an immediate and urgent need to facilitate the development of agriculture and agricultural businesses in the State of Arkansas. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

15-5-801. Rural development generally.

The Arkansas Development Finance Authority shall act as coordinator with other state agencies in forming advisory teams to work with communities in the development of business, industry, and agriculture in the rural areas of the state.

History. Acts 1989, No. 885, § 2.

15-5-802. Division of Agriculture Development.

There is created a Division of Agriculture Development within the Arkansas Development Finance Authority. The division will be staffed with adequate personnel to carry out its duties as itemized and described in this subchapter and in the authority's appropriations legislation.

History. Acts 1989, No. 885, § 2.

15-5-803. Duties of division.

The functions of the Division of Agriculture Development of the Arkansas Development Finance Authority shall include to:

- (1) Monitor and advise the Governor and the Arkansas Development Finance Authority on federal and state legislative issues affecting agriculture;
- (2) Serve as an ombudsman for the agricultural community;
- (3) Identify job creation opportunities in the agriculture business;
- (4) Assist in domestic and international marketing of agricultural products;
- (5) Identify new agricultural business enterprises as well as assist in implementing an agriculture awareness program in this state;
- (6) Identify problems in the agricultural sector and develop necessary policies and programs to address the problems; and
- (7) Perform such other duties as prescribed by the Governor and the Chair of the Board of Directors of the Arkansas Development Finance Authority.

History. Acts 1989, No. 885, § 2.

15-5-804. Advisory capacity of division.

The Division of Agriculture Development of the Arkansas Development Finance Authority is mandated to serve in an advisory capacity to the development finance functions of the Arkansas Development Finance Authority as they may relate to the development of agricultural business enterprises.

History. Acts 1989, No. 885, § 2.

15-5-805. Catfish Industry Development Program.

(a)(1) There is created a Catfish Industry Development Program within the Arkansas Development Finance Authority.

(2) The program's office will be staffed with adequate personnel to carry out its functions as itemized and described in this section and in the appropriation legislation of the Arkansas Development Finance Authority.

(b) The functions of the program shall include:

(1) Monitoring and advising the Governor and the authority on federal and state legislative issues affecting the catfish industry;

(2) Identifying job-creation opportunities in the catfish industry;

(3) Identifying new catfish industry enterprises as well as assisting in implementing a catfish industry awareness program in this state;

(4) Identifying problems in the catfish industry and developing necessary policies and programs to address the problems;

(5) Developing financing programs to provide funds for new and existing catfish-industry enterprises; and

(6) Performing such other duties as prescribed by the Governor and the Chair of the Board of Directors of the Arkansas Development Finance Authority.

History. Acts 1991, No. 764, § 2.

SUBCHAPTER 9 — CONSTRUCTION ASSISTANCE REVOLVING LOANS

SECTION.

15-5-901. Fund — Establishment — Uses — Accounts.

15-5-902. Fund — Administration.

15-5-903. Fund — Grants — Deposits — Cash funds.

15-5-904. Fees for technical and administrative services.

15-5-905. Federal grants deposited into fund.

SECTION.

15-5-906. Security for bonds.

15-5-907. Substitution of loans — Forgiveness of principal.

15-5-908. Withholding general revenue turnback.

15-5-909. Definitions.

15-5-910. Interest rates on loans.

A.C.R.C. Notes. Acts 1991, No. 180, § 3, provided: "Pursuant to actions of the Seventy-Eighth General Assembly, any appropriations made payable from the Construction Grants Revolving Loan Fund are hereby deemed to be payable from the Construction Assistance Revolving Loan Fund."

Acts 2003, No. 548, § 1, provided: "TRANSFER OF FUNDS. (a) The Construction Assistance Revolving Loan Fund established by Act 718 of 1991, as amended, except the remedial action account established under Arkansas Code § 15-5-901(d), concerning the Arkansas Development Finance Authority and its powers, duties, functions, assets, records, properties, funds, and appropriations are transferred by a Type 2 transfer as provided in Arkansas Code § 25-2-105 to the Arkansas Soil and Water Conservation Commission.

"(b) For the purposes of this act, the Arkansas Soil and Water Conservation Commission shall be considered a principal department established by Act 38 of 1971."

Effective Dates. Acts 1991, No. 180, § 9: Feb. 18, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that funds provided by the Seventy-Seventh General Assembly for the operations of the Arkansas Development Finance Authority are, due to unforeseen circumstances, insufficient for the Arkansas Development Finance Authority to continue to provide essential governmental services that the provisions of this act will provide the necessary monies for the Arkansas Development Finance Authority to continue such services; and that a delay in the effective date of this Act could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1991, No. 718, § 7: Mar. 25, 1991. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that there is an immediate need for improvements to public wastewater systems in the state that are operated by various local governmental entities and that the provisions of this act are immediately needed to provide an additional method of financing such improvements by such entities in connection with federal programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 548, § 5: July 1, 2003. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that administration of the clean water fund is of critical importance to the citizens of Arkansas, that the fund may be administered more efficiently by an agency that specializes in the administration of numerous other revolving loan programs associated with environmental projects, and that the provisions of this act are necessary to preserve and improve the efficient administration of these programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 2003."

Acts 2009, No. 458, § 11: Mar. 18, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the United States Government has enacted legislation to provide states with emergency assistance in the face of national economic crisis; and this act is immediately necessary to allow the state to timely meet the requirements of the federal stimulus act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-5-901. Fund — Establishment — Uses — Accounts.

(a)(1)(A) There is established on the books of the Arkansas Natural Resources Commission a special restricted fund to be known as the "Construction Assistance Revolving Loan Fund".

(B) The fund shall be maintained in perpetuity and administered by the commission for the purposes stated in this subchapter.

(2) Grants from the federal government or its agencies allotted to the state for capitalization of the fund, state matching grants when required, proceeds of bonds issued by the commission or the Arkansas Development Finance Authority for capitalization of the fund, principal, interest, and premiums on loans provided, and bonds, notes, and other evidences of indebtedness purchased with moneys in the fund shall be deposited into the fund.

(3) The commission may deposit loans made to and bonds, notes, and other evidences of indebtedness issued by local governmental entities and other owners of environmental projects to finance or refinance the planning, design, acquisition, construction, expansion, equipping, rehabilitation, or consolidation of wastewater systems, water systems, solid and hazardous waste facilities, recycling facilities, nonpoint source management facilities, wetlands conservation and management facilities, and other environmental projects or parts of environmental projects in the fund.

(b) Moneys in the fund shall be expended in a manner consistent with the terms and conditions of applicable federal and state capitalization grants and may be used:

(1) To provide loans for the planning, design, acquisition, construction, expansion, equipping, rehabilitation, consolidation, or refinancing of wastewater systems, water systems, solid and hazardous waste facilities, recycling facilities, nonpoint source management facilities, wetlands conservation and management facilities, and other environmental projects or parts of environmental projects;

(2) Subject to the provisions of subsection (c) of this section and subject to the approval of the commission, to secure the payment of the principal of and premium, if any, and interest on and to pay costs incurred in connection with bonds issued by the commission or the authority, if proceeds of the bonds are deposited into the Construction Assistance Revolving Loan Fund Account;

(3) To purchase bonds, notes, or other evidences of indebtedness issued by local governmental entities to finance or refinance the planning, design, acquisition, construction, expansion, equipping, rehabilitation, or consolidation of wastewater systems, water systems, solid and hazardous waste facilities, recycling facilities, nonpoint source management facilities, wetlands conservation and management facilities, and other environmental projects or parts of environmental projects;

(4) To fund other wastewater system programs, water system programs, solid and hazardous waste facilities programs, recycling pro-

grams, nonpoint source management facilities, wetlands conservation and management facilities, and other environmental programs that the federal or state government may allow in the future;

(5) To fund the administrative expenses of the commission relating to the responsibilities and requirements of this subchapter and the federal environmental acts as defined in § 15-5-909;

(6) To provide for any other expenditures consistent with applicable federal and state law;

(7) To provide loans to prospective and actual purchasers of abandoned industrial, commercial, or agricultural sites for assessments, investigations, and remedial actions pursuant to § 8-7-1101;

(8) To pay the principal of and premium, if any, and interest on and to pay costs incurred in connection with bonds issued by the commission or the authority, if proceeds of the bonds are deposited in the Construction Assistance Revolving Loan Fund Account;

(9) To make grants or loans to the Safe Drinking Water Fund established by § 15-22-1102 in amounts approved by the commission, consistent with applicable federal law;

(10) Subject to the provisions of subsection (c) of this section and subject to the approval of the commission, to secure the payment of the principal of and premium, if any, and interest on bonds issued by the commission or the authority, if proceeds of the bonds are deposited into the Drinking Water State Revolving Loan Fund Account established by § 15-22-1102, consistent with applicable federal law;

(11) Subject to subsection (c) of this section and the approval of the commission, to pay the principal of and premium, if any, and interest on and to pay costs incurred in connection with bonds issued by the commission or the authority, if proceeds of the bonds are deposited into the Drinking Water State Revolving Loan Fund Account established by § 15-22-1102, consistent with applicable federal law; or

(12)(A) To make grants for the planning, design, acquisition, construction, expansion, equipping, rehabilitation, or consolidation of wastewater systems, water systems, solid and hazardous waste facilities, recycling facilities, nonpoint source management facilities, wetlands conservation and management facilities, and other environmental projects or parts of environmental projects.

(B) However, grants shall be made only from moneys in the fund provided by the federal government under the Clean Water Act to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants or any combination of forgiveness of principal, negative interest loans, or grants.

(c)(1) There is established a separate account within the fund, designated the "State Grants Account", into which moneys appropriated by the state for deposit into the fund shall be deposited.

(2)(A) Moneys in the State Grants Account may be expended for the same purposes as other moneys in the fund.

(B) However, moneys in the State Grants Account shall never be pledged to the payment of or as security for any bonds issued by the commission or the authority.

(d)(1) There is established a separate account within the fund, designated the "Remedial Action Account", into which moneys identified in § 8-7-504(c) and any other moneys as designated by the Director of the Arkansas Department of Environmental Quality shall be deposited.

(2) Moneys in the Remedial Action Account may be expended as authorized in § 8-7-1101 and for the same purposes as other moneys in the fund.

(e)(1) There is established a separate account within the fund, designated the "Construction Assistance Administrative Account", into which shall be deposited:

(A) Moneys provided by the federal government under the federal environmental acts for the purpose of administering programs funded by the federal environmental acts; and

(B) Fees under § 15-5-904.

(2) Moneys in the Construction Assistance Administrative Account may be expended by the commission for administrative costs of programs funded by the federal environmental acts.

(3) Moneys in the Construction Assistance Administrative Account shall never be pledged to the payment of or as security for any bonds issued by the authority or the commission.

(f)(1) There is established a separate account within the fund, designated the "Construction Assistance Revolving Loan Fund Account", into which shall be deposited moneys provided by:

(A) The federal government under the federal environmental acts;

(B) Proceeds of bonds issued by the commission or the authority; and

(C) Other amounts, excluding state appropriations, received under § 15-5-903 for the purpose of providing financial assistance to local governmental entities and other owners of environmental projects in connection with the planning, design, acquisition, construction, expansion, equipping, or rehabilitation of wastewater systems, water systems, solid and hazardous waste facilities, recycling facilities, nonpoint source management facilities, wetlands conservation and management facilities, and other environmental projects or parts of environmental projects.

(2) Moneys in the Construction Assistance Revolving Loan Fund Account may also be expended for the purposes set forth in subdivisions (b)(1)-(5) and (b)(7)-(12) of this section.

(g) The commission may establish and maintain additional accounts within the fund or subaccounts within the accounts established by this section.

(h) The commission shall maintain the fund at the authority or at one (1) or more financial institutions within or without the state.

History. Acts 1991, No. 718, § 1; 1993, No. 833, § 1; 1997, No. 1042, §§ 6, 7; 1999, No. 1164, § 130; 2003, No. 548, § 2; 2009, No. 458, § 1.

A.C.R.C. Notes. Acts 1991, No. 180, § 3, provided: "Pursuant to actions of the Seventy-Eighth General Assembly, any appropriations made payable from the Construction Grants Revolving Loan Fund are hereby deemed to be payable from the Construction Assistance Revolving Loan Fund."

Acts 1991, No. 718, § 3, provided: "All assets of the authority acquired prior to the effective date of this act with moneys in the Construction Grants Revolving Loan Fund created by § 19-5-944 [repealed] shall be subject to the provisions of this subchapter and shall be assets of the fund."

Acts 1997, No. 1219, § 2, provided: "'Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'. (a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

Acts 2001, No. 459, § 1, provided: "TRANSFER OF PROGRAM. (a) The Construction Assistance Revolving Loan Fund Program of the Arkansas Department of Environmental Quality and its powers, duties, functions, assets, records, properties, funds, and appropriations are transferred by Type 2 transfer as provided in Ark. Code Ann. § 25-2-105 to the Arkansas Soil and Water Conservation Commission.

"(b) For the purposes of this Act, the Arkansas Soil and Water Conservation Commission shall be considered a principal department established by Act 38 of 1971."

Amendments. The 2009 amendment, in (a), subdivided (a)(1), substituted "Arkansas Natural Resources Commission" for "Arkansas Soil and Water Conservation Commission" in (a)(1)(A), substituted "subchapter" for "section" in (a)(1)(B), and inserted "made to and" in (a)(3); inserted "the planning, design, acquisition, construction, expansion, equipping, rehabilitation, or consolidation of" in (a)(3) and (b)(3); substituted "systems" for "system projects" in (a)(3) and (b)(3); in (b), inserted "and the federal environmental acts as defined in § 15-5-909" in (b)(5), and inserted (b)(11) and (b)(12); substituted "(b)(7)-(12)" for "(b)(7)-(10)" in (f)(2); and made related and minor stylistic changes.

15-5-902. Fund — Administration.

(a)(1) The Construction Assistance Revolving Loan Fund shall be administered by the Arkansas Natural Resources Commission.

(2) The commission may establish procedures and adopt rules required to administer the fund and programs financed, in whole or in part, with moneys in the fund in accordance with federal or state law providing for:

(A) Wastewater systems, water systems, solid and hazardous waste facilities, recycling facilities, nonpoint source management facilities, wetlands conservation and management facilities, and other environmental projects; and

(B) Assessments, investigations, and remedial actions with respect to abandoned industrial, commercial, or agricultural sites, including without limitation the federal environmental acts.

(b) The commission may enter into contracts and other agreements in connection with the operation of the fund, including without limitation contracts and agreements with federal agencies, local governmental entities, the Arkansas Development Finance Authority, the Arkansas Department of Environmental Quality, and other persons to the extent necessary or convenient for the implementation of the fund and programs financed, in whole or in part, with moneys in the fund.

(c) The commission shall maintain full authority for the operation of the fund in accordance with applicable federal and state law, including withdrawals necessary to achieve the intended purposes of the fund.

(d) To the extent that moneys provided by the federal government under the federal environmental acts and nonappropriated state matches do not designate the account into which the moneys shall be deposited, the moneys shall be deposited into the accounts within the fund designated by the commission.

(e) The commission shall execute capitalization grant agreements on behalf of the state in order to obtain funds under the Clean Water Act.

History. Acts 1991, No. 718, § 1; 1993, No. 833, § 2; 1997, No. 1042, § 8; 2003, No. 548, § 2; 2009, No. 458, § 1.

Amendments. The 2009 amendment, in (a), substituted “Arkansas Natural Re-

sources Commission” for “Arkansas Soil and Water Conservation Commission” in (a)(1), and substituted “rules” for “regulations as may be” in (a)(2); added (e); and made minor stylistic changes.

15-5-903. Fund — Grants — Deposits — Cash funds.

(a) The Arkansas Natural Resources Commission and the Arkansas Development Finance Authority as agent for the commission are authorized to accept grants for the use of the Construction Assistance Revolving Loan Fund from any state or federal agencies, municipalities, corporations, foundations, individual donors, or authorities, specifically including without limitation appropriations from the State Treasury as heretofore or hereafter provided.

(b) All moneys received by the commission or the authority under and pursuant to the provisions of this subchapter shall be deposited as and when received in the fund except as otherwise specifically provided by federal or state law.

(c)(1) Except for moneys hereafter deposited in or paid to the commission or the authority for deposit in the State Grants Account, all moneys now or hereafter received for, deposited in, or paid to the commission or the authority for deposit in the fund are specifically declared to be cash funds restricted in their use and which shall not be deposited in the State Treasury or deemed to be a part of the State Treasury for the purposes of Arkansas Constitution, Article 5, § 29; Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any other constitutional or statutory provisions but

shall be held and applied by the commission or the authority as agent for the commission solely for the uses set forth in this subchapter.

(2) Interest and other moneys received from the investment of moneys, the purchase of bonds, notes, or other evidences of indebtedness issued by local governmental entities, or the making of loans with moneys in the fund, including in each case moneys in the State Grants Account, are declared to be cash funds restricted in their use and shall not be deposited in the State Treasury but shall be held and applied by the commission or the authority solely for the uses set forth in this subchapter.

History. Acts 1991, No. 718, § 1; 2003, No. 548, § 2; 2009, No. 458, § 3.

Amendments. The 2009 amendment, in (a), substituted “Arkansas Natural Re-

sources Commission” for “Arkansas Soil and Water Conservation Commission,” added “as heretofore or hereafter provided,” and made a minor stylistic change.

15-5-904. Fees for technical and administrative services.

(a)(1) The Arkansas Natural Resources Commission may establish and collect fees for its technical and administrative services in connection with the planning, design, acquisition, construction, expansion, equipping, or rehabilitation of wastewater systems, water systems, solid and hazardous waste facilities, recycling facilities, nonpoint source management facilities, wetlands conservation and management facilities, and other environmental projects or parts of environmental projects and in connection with assessments, investigations, and remedial actions with respect to abandoned industrial, commercial, or agricultural sites, financed in whole or in part with moneys in the Construction Assistance Revolving Loan Fund.

(2) The authority granted in this section shall be supplemental to the authority granted to the commission under other laws to establish and collect fees for its services.

(b) The fees shall be payable in any one (1) or more of the following methods:

(1) From proceeds of loans, bonds, notes, or other evidences of indebtedness of a local governmental entity or other owner of an environmental project purchased from moneys in the fund;

(2) From proceeds of bonds issued by the commission or the Arkansas Development Finance Authority in connection with the fund; or

(3) From periodic payments due on the loans, bonds, notes, or other evidences of indebtedness of a local governmental entity or other owner of an environmental project purchased with moneys in the fund.

(c) If requested by the commission, the authority will collect the fees from the local governmental entities or other environmental project owners receiving financial assistance from the Construction Assistance Revolving Loan Fund and deposit the fees into the Construction Assistance Administrative Account within five (5) days after each periodic payment is made.

History. Acts 1991, No. 718, § 1; 1993, No. 833, § 3; 1997, No. 1042, § 9; 2003, No. 548, § 2; 2009, No. 458, § 4.

Amendments. The 2009 amendment substituted “Arkansas Natural Resources

Commission” for “Arkansas Soil and Water Conservation Commission” in (a)(1); inserted “loans” in (b)(1) and (b)(3); added (c); and made related changes.

15-5-905. Federal grants deposited into fund.

(a) The Arkansas Natural Resources Commission and the Arkansas Development Finance Authority may accept moneys for deposit into the Construction Assistance Revolving Loan Fund from allocations from the Treasurer of State under this section.

(b) Notwithstanding the provisions of §§ 19-6-108 and 19-6-601, grants received by the Treasurer of State from the federal government for deposit into the Construction Assistance Revolving Loan Fund are declared to be cash funds restricted in their use and dedicated and are to be used solely as authorized in this subchapter.

History. Acts 1991, No. 718, §§ 1, 2; 1993, No. 833, § 4; 2003, No. 548, § 2; 2009, No. 458, § 5.

Amendments. The 2009 amendment,

in (a), substituted “Arkansas Natural Resources Commission” for “Arkansas Soil and Water Conservation Commission” and made minor stylistic changes.

15-5-906. Security for bonds.

(a) The Arkansas Natural Resources Commission and, with the approval of the commission, the Arkansas Development Finance Authority may use the moneys in the Construction Assistance Revolving Loan Fund, excluding the State Grants Account, and use the assets acquired with moneys in the fund to secure the payment of the principal of and premium, if any, and interest on bonds issued by the commission or the authority if the proceeds of the bonds are deposited into the Construction Assistance Revolving Loan Fund Account and pay the principal of and premium, if any, and interest on and pay costs incurred in connection with bonds issued by the commission or the authority if proceeds of the bonds are deposited into the Construction Assistance Revolving Loan Fund Account.

(b) Subject to § 15-5-901(c), the commission and, with the approval of the commission, the authority may pledge the Construction Assistance Revolving Loan Fund Account, excluding the State Grants Account, and pledge the assets acquired with moneys in the Construction Assistance Revolving Loan Fund Account to secure the payment of the principal of and premium, if any, and interest on bonds issued by the commission or the authority if proceeds of the bonds are deposited into the Drinking Water State Revolving Loan Fund Account established by § 15-22-1102, consistent with applicable federal law and pay the principal of and premium, if any, and interest on and costs incurred in connection with bonds issued by the commission or the authority if proceeds of the bonds are deposited into the Drinking Water State Revolving Loan Fund Account established by § 15-22-1102, consistent with applicable federal law.

(c) Nothing in subsections (a) and (b) of this section shall be deemed to adversely affect pledges made by the authority to secure the payment of the principal of and premium, if any, and interest on bonds issued by the authority before July 1, 2003, so long as the bonds are outstanding.

(d) All accounts within the fund or subaccounts within the accounts established in § 15-5-901 pledged to secure the payment of the principal of and premium, if any, and interest on bonds issued by the authority before July 1, 2003, shall be maintained at the authority so long as the bonds are outstanding.

History. Acts 1991, No. 718, § 1; 2003, No. 548, § 2; 2009, No. 458, § 6.

Amendments. The 2009 amendment, in (a), substituted “Arkansas Natural Resources Commission” for “Arkansas Soil and Water Conservation Commission” and inserted “and pay the principal ...

Construction Assistance Revolving Loan Fund Account”; in (b), inserted “Subject to § 15-5-901(c)” and inserted “and pay the principal ... consistent with applicable federal law”; and made minor stylistic changes.

15-5-907. Substitution of loans — Forgiveness of principal.

(a) The Arkansas Natural Resources Commission may remove any loan, bond, note, or other evidence of indebtedness purchased with moneys in the Construction Assistance Revolving Loan Fund Account from the account and substitute another loan, bond, note, or other evidence of indebtedness not then in default as to payment of any installment of principal, interest, or financing fee and having an equal or greater outstanding principal balance, made by the commission for a purpose authorized by this subchapter.

(b) The commission may forgive principal of loans made and bonds, notes, and other evidences of indebtedness purchased with moneys in the Construction Assistance Revolving Loan Fund, provided that principal may be forgiven only for loans made and bonds, notes, and other evidences of indebtedness purchased with moneys in the fund provided by the federal government under the Clean Water Act for the purpose of providing additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants or any combination of principal, negative interest loans, or grants.

History. Acts 2003, No. 548, § 3; 2009, No. 458, § 7.

Amendments. The 2009 amendment added (b) and redesignated the remaining text accordingly; substituted “Arkansas

Natural Resources Commission” for “Arkansas Soil and Water Conservation Commission” in (a); and made minor stylistic changes.

15-5-908. Withholding general revenue turnback.

(a) Should any city, town, county, or political subdivision receiving general revenue turnback funds, as defined in the Revenue Stabilization Law, § 19-5-101 et seq., fail, neglect, or refuse to pay any installment of principal, interest, or financing fee for a period of more than ninety (90) calendar days past the due date in accordance with the

written instrument for the repayment of its bonds, notes, or other evidences of indebtedness purchased with moneys in the Construction Assistance Revolving Loan Fund Account, the Arkansas Natural Resources Commission, after notification to the city, town, county, or political subdivision, may certify to the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State the name of the city, town, county, or political subdivision, the amount of deficiencies ninety (90) days or more past due.

(b) Upon certification, the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State are directed to withhold from the city's, town's, county's, or other political subdivision's share of general revenue turnback, as the share is defined in the Revenue Stabilization Law, § 19-5-101 et seq., the amount certified as due and to transfer the amount to the Construction Assistance Revolving Loan Fund Account and the Construction Assistance Administrative Account as follows:

(1) Amounts withheld as fees shall be transferred to the Construction Assistance Administrative Account; and

(2) Amounts withheld as principal and interest shall be transferred to the Construction Assistance Revolving Loan Fund Account.

History. Acts 2003, No. 548, § 3; 2009, No. 458, § 8. substituted "Arkansas Natural Resources Commission" for "Arkansas Soil and Water Conservation Commission" in (a).

Amendments. The 2009 amendment

15-5-909. Definitions.

As used in this subchapter:

(1) "Administrative account" means the Construction Assistance Administrative Account established by this subchapter within the Construction Assistance Revolving Loan Fund;

(2) "Authority" means the Arkansas Development Finance Authority or any successor agency or commission of the state;

(3) "Clean Water Act" means the Federal Water Pollution Control Act of 1972, as amended by the federal Water Quality Act of 1987;

(4) "Commission" means the Arkansas Natural Resources Commission or a successor agency or commission of the state;

(5) "Department" means the Arkansas Department of Environmental Quality or a successor agency of the state;

(6) "Federal environmental acts" means the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, the Clean Air Act, and the Comprehensive Environmental Response, Compensation, and Liability Act;

(7) "Fund" means the Construction Assistance Revolving Loan Fund established by this subchapter;

(8) "Owner" means the owner or prospective owner of an environmental project, excluding any federal agencies;

(9) "Revolving loan account" means the Construction Assistance Revolving Loan Fund Account established by this subchapter within the fund;

- (10) "State" means the State of Arkansas; and
- (11) "State Grants Account" means the State Grants Account established by this subchapter within the fund.

History. Acts 2003, No. 548, § 3; 2009, No. 458, § 9.

Amendments. The 2009 amendment substituted "Arkansas Natural Resources Commission" for "Arkansas Soil and Water Conservation Commission" in (4), and made minor stylistic changes.

U.S. Code. The Clean Water Act, the federal Safe Drinking Water Act, the fed-

eral Resource Conservation and Recovery Act, the federal Clean Air Act, and the federal Comprehensive Environmental Response, Compensation, and Liability Act are codified as 33 U.S.C. § 1251 et seq., 42 U.S.C. § 201, 42 U.S.C. § 300f et seq., 42 U.S.C. § 6901 et seq., 42 U.S.C. § 7401 et seq. and 42 U.S.C. § 9601 et seq. respectively.

15-5-910. Interest rates on loans.

(a) The loans made and bonds, notes, and other evidences of indebtedness purchased with moneys in the Construction Assistance State Revolving Loan Fund shall bear interest at rates of interest, including without limitation negative rates of interest, established by the Arkansas Natural Resources Commission.

(b) However, the commission may establish negative rates of interest only for loans made and bonds, notes, and other evidences of indebtedness purchased with moneys in the fund provided by the federal government under the Clean Water Act for the purpose of providing additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants or any combination of principal, negative interest loans, or grants.

(c) Notwithstanding any other provision of law, loans, bonds, notes, and other evidences of indebtedness issued by owners may bear interest at a negative rate if they are purchased with moneys in the Construction Assistance State Revolving Loan Fund.

History. Acts 2009, No. 458, § 10.

SUBCHAPTER 10 — WATER RESOURCES AND WASTE DISPOSAL REVOLVING LOAN FUND

SECTION.

15-5-1001 — 15-5-1006. [Repealed.]

Effective Dates. Acts 2003, No. 465, § 6: July 1, 2003. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that administration of the Safe Drinking Water Fund is of critical importance to the citizens of Arkansas, that the fund may be administered more efficiently by an agency that specializes in the administration of numerous other revolving

loan programs associated with water development projects, and that the provisions of this act are necessary to preserve and improve the efficient administration of these programs. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effective from and after July 1, 2003."

15-5-1001 — 15-5-1006. [Repealed.]

Publisher's Notes. This subchapter, concerning the Water Resources and Waste Disposal Revolving Fund, was repealed by Acts 2003, No. 465, § 5. The subchapter was derived from the following sources:

15-5-1001. Acts 1993, No. 858, § 1.
 15-5-1002. Acts 1993, No. 858, § 2.
 15-5-1003. Acts 1993, No. 858, § 3.
 15-5-1004. Acts 1993, No. 858, § 4.
 15-5-1005. Acts 1993, No. 858, § 5.
 15-5-1006. Acts 1993, No. 858, § 6.

SUBCHAPTER 11 — ARKANSAS CAPITAL ACCESS PROGRAM FOR SMALL BUSINESS ACT OF 1993

SECTION.

- 15-5-1101. Title.
- 15-5-1102. Legislative findings and declaration of public necessity.
- 15-5-1103. Definitions.
- 15-5-1104. Contracts with financial institutions for capital access — Contents of contract.
- 15-5-1105. Capital Access Fund — Use — Investment earnings — Administrative expenses.
- 15-5-1106. Loss reserve accounts — Limitation on amount.

SECTION.

- 15-5-1107. Enrollment of qualified loan in program — Procedure — Fee — Transfers to loss reserve account.
- 15-5-1108. Claims for reimbursement of losses — Amounts subject to reimbursement.
- 15-5-1109. Rules.
- 15-5-1110. Financial report of Capital Access Fund.

Effective Dates. Acts 1993, Nos. 773 and 886, § 14: Mar. 26, 1993, and Apr. 5, 1993, respectively. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that there is an urgent need to provide assistance to financial institutions in providing affordable financing to small businesses in Arkansas and that the Authority possesses the expertise and resources to establish and administer the Program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage."

Acts 1995, No. 487, § 5: Feb. 28, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that bona fide development finance corporations should be but are not presently authorized to participate in the Capital Access Program administered by the Arkansas Development Finance Authority, and that such participation will promote the economic stability and development of the State. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

15-5-1101. Title.

This subchapter may be referred to and cited as the "Arkansas Capital Access Program for Small Business Act of 1993".

History. Acts 1993, No. 733, § 1; 1993, No. 886, § 1.

15-5-1102. Legislative findings and declaration of public necessity.

(a) The General Assembly finds:

(1) There is a persistent shortage of capital available to small businesses in Arkansas, and there exists an immediate and urgent need to provide the means and methods for providing financing to:

(A) Improve the viability of small businesses in the state by stabilizing and increasing employment in small businesses;

(B) Foster an environment that promotes the establishment of new small businesses which reduce the state's unemployment rate by hiring new employees; and

(C) Complement Arkansas financial institutions to better serve their customers in ways which contribute to a strengthened and diversified Arkansas economy, and which does not compete with Arkansas financial institutions;

(2) Small businesses make important contributions to economic growth and vitality in this state;

(3) Small businesses comprise approximately eighty-five percent (85%) of the business entities in this state;

(4) Small businesses provide approximately ninety-eight percent (98%) of the private sector employment in this state;

(5) All national economic indicators establish that the greatest source of future new employment is in the small business sector of the economy;

(6) Many private sector financial institutions in Arkansas are limited in their ability to provide financing to small but rapidly growing businesses; and

(7) There exists a need to leverage private sector investment in entrepreneurial activity and in economic development finance, therefore, state assistance for development finance should reflect a leveraging investment strategy.

(b) It is the purpose of this subchapter to establish a capital access program under which the State of Arkansas through the Arkansas Development Finance Authority will provide public fiscal resources to assist Arkansas financial institutions to overcome obstacles and constraints in meeting the full range of economically sound financing needs of Arkansas small businesses.

History. Acts 1993, No. 733, § 2; 1993, No. 886, § 2.

15-5-1103. Definitions.

As used in this subchapter:

(1) "Authority" means the Arkansas Development Finance Authority;

(2) "Financial institution" means all banks, savings and loan associations, corporations organized pursuant to either the Arkansas Development Finance Corporation Act, § 15-4-901 et seq., or the County

and Regional Industrial Development Company Act, § 15-4-1201 et seq., and any other lending institutions approved by the board;

(3) "Loss reserve account" means an account in any financial institution which is established and maintained by the authority for the benefit of a financial institution participating in the program;

(4) "Program" means the Arkansas Capital Access Program for Small Business;

(5) "Qualified business" means any person conducting business for profit or not-for-profit who is authorized to conduct business in the State of Arkansas;

(6) "Qualified loan" means a loan or portion of a loan made by a financial institution to a qualified business for any business activity that has its primary economic effect in Arkansas; and

(7) "State" means the State of Arkansas.

History. Acts 1993, No. 733, § 3; 1993, No. 886, § 3; 1995, No. 487, § 1; 1999, No. 429, § 8.

15-5-1104. Contracts with financial institutions for capital access — Contents of contract.

(a) The Arkansas Development Finance Authority may contract with any financial institution for the purpose of allowing the financial institution to participate in the Arkansas Capital Access Program for Small Business.

(b) A contract between the authority and a financial institution under this section shall provide:

(1) For the creation of a loss reserve account by the authority for the benefit of the financial institution;

(2) That the financial institution, a qualified business, and the authority will deposit moneys to the credit of the institution's loss reserve account when the financial institution makes a qualified loan to the qualified business;

(3) That the authority will pay moneys in the loss reserve account, not exceeding an amount equal to the total amount credited to the loss reserve account, to the financial institution to reimburse the institution for any financial loss incurred as a result of any qualified loan made under the program;

(4) That the liability of the authority to the financial institution under the contract is limited to the amount of money credited to the loss reserve account of the institution; and

(5) For such other terms as the authority may require.

History. Acts 1993, No. 733, § 4; 1993, No. 886, § 4.

15-5-1105. Capital Access Fund — Use — Investment earnings — Administrative expenses.

(a) There is created within the Arkansas Development Finance Authority the "Capital Access Fund".

(b)(1) All moneys deposited into the fund are for the purpose of making payments to loan loss reserve accounts established under § 15-5-1106.

(2) All moneys available for deposit into the fund shall be restricted to only such cash funds available to the authority for the purposes provided in this subchapter.

(c) Moneys in the fund may be invested as provided in § 15-5-407.

History. Acts 1993, No. 733, § 5; 1993, No. 886, § 5.

15-5-1106. Loss reserve accounts — Limitation on amount.

(a) The Arkansas Development Finance Authority shall establish a loss reserve account for each financial institution with which the authority makes a contract.

(b) The loss reserve account for a financial institution shall consist of moneys paid in fees by borrowers and the financial institution and moneys transferred to the account from the Capital Access Fund.

(c) The authority may establish and maintain loss reserve accounts with any financial institution under such policies as the authority may adopt.

(d) All moneys in a loss reserve account are the property of the authority.

History. Acts 1993, No. 733, § 6; 1993, No. 886, § 6.

15-5-1107. Enrollment of qualified loan in program — Procedure — Fee — Transfers to loss reserve account.

(a)(1) When a financial institution participates in the Arkansas Capital Access Program for Small Business, if the financial institution decides to enroll a qualified loan under the program in order to obtain the protection against loss provided by its loss reserve account, the financial institution shall notify the Arkansas Development Finance Authority of the loan within ten (10) days after the loan is made.

(2) The notification shall be in writing on a form prescribed by the authority.

(b)(1) When making a qualified loan that will be enrolled under the program, the financial institution shall require the qualified business to which the loan is made to pay a fee of not less than one and one-half percent (1.5%) of the principal amount of the loan but not more than three and one-half percent (3.5%) of the principal amount.

(2)(A) The financial institution shall also pay a fee in an amount equal to the fee paid by the borrower.

(B) However, the financial institution may collect the amount of its fee from the qualified borrower.

(3) The financial institution shall deliver the fees collected under this subsection to the authority for deposit in the loss reserve account for the institution.

(c) When depositing fees collected under subsection (b) of this section to the credit of the loss reserve account for a financial institution, the authority shall transfer an amount that is not less than the total amount of the fees paid by the borrower and the financial institution from the Capital Access Fund to the loss reserve account for the institution.

History. Acts 1993, No. 733, § 7; 1993, No. 886, § 7.

15-5-1108. Claims for reimbursement of losses — Amounts subject to reimbursement.

(a) The Arkansas Development Finance Authority shall establish procedures under which financial institutions participating in the Arkansas Capital Access Program for Small Business may submit claims for reimbursement for losses incurred as a result of qualified loan defaults.

(b) Costs for which a financial institution may be reimbursed from its loss reserve account include loan principal, accrued interest on the principal, actual and necessary costs of seeking recovery of the principal amount and interest thereon, and any other related costs.

(c)(1) A financial institution may seek reimbursement of loan losses prior to the liquidation of collateral from defaulted loans.

(2) The financial institution shall repay its loss reserve account for any moneys received as reimbursement under this section if the financial institution recovers moneys from the borrower or from the liquidation of collateral for the defaulted loan.

History. Acts 1993, No. 733, § 8; 1993, No. 886, § 8.

15-5-1109. Rules.

The Arkansas Development Finance Authority may adopt such rules as it considers necessary to carry out its duties, functions, and powers relating to the Arkansas Capital Access Program for Small Business.

History. Acts 1993, No. 733, § 9; 1993, No. 886, § 9.

15-5-1110. Financial report of Capital Access Fund.

(a) At least semiannually every calendar year, the Arkansas Development Finance Authority shall prepare a report conforming to generally accepted accounting principles that describes the financial condi-

tion of the Capital Access Fund and describes the results and economic impact of the Arkansas Capital Access Program for Small Business.

(b) The reports required under this section shall be submitted to the Governor and to the Legislative Council.

History. Acts 1993, No. 733, § 10; 1993, No. 886, § 10.

SUBCHAPTER 12 — PETROLEUM STORAGE TANK TRUST FUND BOND

FINANCING ACT

SECTION.	SECTION.
15-5-1201. Title.	Service Fund — Payment of debt service — Tax exemption.
15-5-1202. Purpose.	
15-5-1203. Definitions.	
15-5-1204. Issuance of revenue bonds by the authority.	15-5-1207. Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund — Expiration of provision.
15-5-1205. Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund — Pledged fees.	15-5-1208. Refunding bonds.
15-5-1206. Petroleum Storage Tank Trust Fund Revenue Bond Debt	15-5-1209. Eligible security.
	15-5-1210. Subchapter cumulative of other laws.

Effective Dates. Acts 1995, No. 1054, § 7: Apr. 10, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that there is an urgent need to provide an additional method for financing the remediation costs and costs of compensating tank owners or operators for third-party claims

from the Petroleum Storage Tank Trust Fund. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

15-5-1201. Title.

This subchapter may be known and may be cited as the “Petroleum Storage Tank Trust Fund Bond Financing Act”.

History. Acts 1995, No. 1054, § 1.

15-5-1202. Purpose.

The purpose of this subchapter is to provide for the benefit of the public an additional method for financing remediation costs and costs of compensating tank owners or operators for third-party claims from the Petroleum Storage Tank Trust Fund. This financing program is made available on terms and conditions prescribed by this subchapter, and it is found and determined that this subchapter is in furtherance of a public purpose and that the duties imposed upon the Arkansas Development Finance Authority in this subchapter are in furtherance of the

conservation of the environment and for the protection of the public health, welfare, and safety.

History. Acts 1995, No. 1054, § 1.

15-5-1203. Definitions.

As used in this subchapter:

(1) "Act" means the Arkansas Development Finance Authority Act, § 15-5-101 et seq.;

(2) "Authority" means the Arkansas Development Finance Authority;

(3) "Bonds" means the Arkansas Development Finance Authority Petroleum Storage Tank Trust Fund revenue bonds or other obligations authorized to be issued or incurred by the authority pursuant to this subchapter and the Arkansas Development Finance Authority Act, §§ 15-5-101 et seq., 15-5-201 et seq., and 15-5-301 et seq.;

(4) "Debt service fund" means the Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund and any subaccount of the fund to be established on the books of the authority for the purpose of paying the principal of and interest on the bonds as they come due;

(5) "Director" means the Director of the Department of Finance and Administration;

(6) "Pledged fees" means the fees collected by the director pursuant to § 8-7-906;

(7) "Reserve fund" means the Petroleum Storage Tank Trust Fund Revenue Bonds Reserve Fund and any subaccount of the fund established on the books of the authority pursuant to this subchapter as a reserve for the payment of the principal or any interest on the bonds;

(8) "Trust fund" means the Petroleum Storage Tank Trust Fund established in the State Treasury pursuant to § 8-7-905; and

(9) "Trust fund act" means the Petroleum Storage Tank Trust Fund Act, § 8-7-901 et seq.

History. Acts 1995, No. 1054, § 1.

15-5-1204. Issuance of revenue bonds by the authority.

(a)(1) Upon the request of the Director of the Arkansas Department of Environmental Quality and based upon an estimate by the Department of Finance and Administration of the pledged fees to be collected, the Arkansas Development Finance Authority may issue bonds for the purpose of:

(A) Providing money for the Petroleum Storage Tank Trust Fund; and

(B) Paying the cost of issuing the bonds and establishing the Petroleum Storage Tank Trust Fund Revenue Bonds Reserve Fund, if necessary.

(2) The money in the Petroleum Storage Tank Trust Fund shall be used as provided in the Petroleum Storage Tank Trust Fund Act, § 8-7-901 et seq.

(b)(1) The bonds are special obligations payable only from:

(A) The pledged fees collected by the Director of the Department of Finance and Administration pursuant to § 8-7-906;

(B) The amounts on deposit in the Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund and the Petroleum Storage Tank Trust Fund Revenue Bonds Reserve Fund, if any; and

(C) The investment income on the amounts in the Petroleum Storage Tank Trust Fund, the Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund, and the Petroleum Storage Tank Trust Fund Revenue Bonds Reserve Fund.

(2) The bonds do not constitute an indebtedness of the state as prohibited by the Arkansas Constitution.

(c)(1)(A) Bonds issued under this subchapter shall be authorized by resolution of the Board of Directors of the Arkansas Development Finance Authority and shall have the form and characteristics and bear the designations as are provided in the resolution and permitted under the Arkansas Development Finance Authority Act, §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316.

(B) The resolution may include such provisions and covenants as the board determines necessary.

(2) The board may approve and have executed any other proceedings, agreements, trust agreements, or other instruments necessary and convenient to the issuance of the bonds.

History. Acts 1995, No. 1054, § 1; 1999, No. 1164, § 131.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: “‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’. (a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general

powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

15-5-1205. Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund — Pledged fees.

(a)(1) The debt service on the bonds shall be secured by a lien on and pledge of the petroleum environmental assurance fee established by § 8-7-906.

(2) The pledging of such fees is authorized.

(b) Commencing on the first day of the month next succeeding the issuance of bonds by the Arkansas Development Finance Authority, the pledged fees are specifically declared to be cash funds restricted in their use and dedicated and to be used solely as provided and authorized in this subchapter, the Arkansas Development Finance Authority Act, §§ 15-5-101 — 15-5-106, 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316, and the Petroleum Storage Tank Trust Fund Act, § 8-7-901 et seq.

(c)(1) Commencing on the first day of the month next succeeding the issuance of bonds by the authority, the pledged fees shall not be deposited into the State Treasury and shall not be subject to legislative appropriations, but, as received by the Director of the Department of Finance and Administration or the Treasurer of State, shall be deposited in a bank or banks selected by the authority and approved by the Treasurer of State.

(2) The pledged fees shall be deposited to the credit of a fund established on the books of the authority created and designated as the “Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund”.

(d)(1) There is established on the books of the authority a reserve fund to be known as the “Petroleum Storage Tank Trust Fund Revenue Bonds Reserve Fund”.

(2) The Petroleum Storage Tank Trust Fund Revenue Bonds Reserve Fund shall be funded from the proceeds of the bonds and shall be held and used to ensure prompt payment of debt service on the bonds in such a manner and pursuant to such conditions as may be specified by the authority in the resolution or trust indenture authorizing or securing the bonds.

History. Acts 1995, No. 1054, § 1; 2005, No. 1962, § 63. fund to be known as the ‘Petroleum Storage Tank Trust Fund Revenue Bonds Reserve Fund’; and substituted “Petroleum Storage Tank Trust Fund Revenue Bonds Reserve Fund” for “fund” in (b)(2).

Amendments. The 2005 amendment, in (d)(1), substituted “There” for “A debt service reserve fund” and added “a reserve

15-5-1206. Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund — Payment of debt service — Tax exemption.

(a) Payment of principal and interest on the bonds shall be paid from the Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund when due.

(b) If and so long as all payments of debt service are properly made, on the last day of each fiscal quarter the pledged fees remaining in the Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund in excess of a reserve of two (2) months’ requirements of debt service shall be withdrawn from the Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund and deposited in the Petroleum Storage Tank Trust Fund as special revenues.

(c) The interest on the bonds shall be exempt from state, county, and municipal income, inheritance, and estate taxes.

History. Acts 1995, No. 1054, § 1.

15-5-1207. Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund — Expiration of provision.

The provisions of this subchapter shall expire upon payment of all principal and accrued interest due on the bonds and any refunding bonds issued.

History. Acts 1995, No. 1054, § 1.

15-5-1208. Refunding bonds.

(a) The Arkansas Development Finance Authority may provide by resolution for the issuance of refunding bonds to refund outstanding bonds issued under this subchapter and accrued interest on those bonds.

(b) The authority may sell the refunding bonds and use the proceeds to retire the outstanding bonds issued under this subchapter, exchange the refunding bonds for the outstanding bonds, or refund the bonds in the manner provided by any other applicable statute.

History. Acts 1995, No. 1054, § 1.

15-5-1209. Eligible security.

The bonds are eligible to secure deposits of public funds of the state and cities, counties, school districts, districts, authorities, and other political subdivisions of the state.

History. Acts 1995, No. 1054, § 1.

15-5-1210. Subchapter cumulative of other laws.

This subchapter is cumulative of other laws on the subject and the Arkansas Development Finance Authority may use provisions of other applicable laws in the issuance of bonds and other obligations, but this subchapter is wholly sufficient authority for the issuance of bonds and the performance of all other acts and procedures authorized by this subchapter.

History. Acts 1995, No. 1054, § 1.

SUBCHAPTER 13 — AFFORDABLE NEIGHBORHOOD HOUSING TAX CREDIT ACT OF 1997

SECTION.

15-5-1301. Title.

15-5-1302. Definitions.

SECTION.

15-5-1303. Affordable housing assistance activities and affordable

SECTION.

housing units — Business
firms proposing to provide
— Procedure for approval
and tax credit.

15-5-1304. Tax credits authorized —
Amount allowed annually

SECTION.

— Exceeded when — Up-
per limits set — Carryover
permitted.

15-5-1305. Rules and regulations.

Cross References. Income taxes,
§ 26-51-101 et seq.

15-5-1301. Title.

This subchapter shall be known and may be cited as the “Affordable Neighborhood Housing Tax Credit Act of 1997”.

History. Acts 1997, No. 1331, § 1.

15-5-1302. Definitions.

As used in this subchapter:

(1) “Affordable housing assistance activities” means money, real, or personal property expended or devoted to the construction or rehabilitation of affordable housing units developed by or in conjunction with any governmental unit or not-for-profit corporation, such costs to include related site and infrastructure costs and community and supportive services;

(2) “Affordable housing unit” means:

(A) For purposes of rental units, a housing unit or units which have restricted rents that do not exceed thirty percent (30%) of median income for the metropolitan area or county in which the project is located for:

(i) At least forty percent (40%) of its units, which must be occupied by persons or families having incomes of sixty percent (60%) or less of the median income for the metropolitan area or county in which the project is located; or

(ii) For at least twenty percent (20%) of its units, which must be occupied by persons or families having incomes of fifty percent (50%) or less of the median income for the metropolitan area or county in which the project is located;

(B) In the case of owner-occupied units, a housing unit which is sold to a purchaser:

(i) Whose family income does not exceed one hundred fifteen percent (115%) of the median income, adjusted for family size, of the county of SMSA at the time of the initial purchase contract;

(ii) Who has not owned a home for three (3) years prior to initial occupancy; and

(iii) Who will occupy the housing unit as the family's principal residence;

(C) In the case of rental units, the cost to the occupant shall be considered the amount of the gross rent; and

(D) For purposes of owner-occupied units, the Arkansas Development Finance Authority shall establish the requirements for an affordable housing unit to be consistent with guidelines established under the federal HOME program;

(3) "Authority" means the Arkansas Development Finance Authority or its successor agency;

(4) "Business firm" means:

(A) A person;

(B) A general or limited partnership;

(C) A partner in such partnership;

(D) A corporation;

(E) A limited liability company or a member thereof;

(F) A shareholder in an S corporation subject to the state income tax imposed by the provisions of §§ 26-51-101 — 26-51-1510;

(G) An insurance company paying an annual tax on its gross premium receipts in this state; or

(H) A financial institution paying income taxes to the State of Arkansas;

(5) "Director" means the Director of the Department of Finance and Administration;

(6) "Governmental unit" means:

(A) The State of Arkansas;

(B) Any county, municipality, or other political subdivision of the State of Arkansas; and

(C) Any agency, board, commission, or instrumentality of any of the foregoing;

(7) "Neighborhood organization" means any organization performing community services or economic development activities in the State of Arkansas and:

(A) Holding a ruling from the Internal Revenue Service that the organization is exempt from income taxation under the provisions of the Internal Revenue Code;

(B) Incorporated in the State of Arkansas as a not-for-profit corporation; or

(C) Designated as a community development corporation by the United States Government under the provisions of Title VII of the Economic Opportunity Act of 1964 [repealed]; and

(8) "S corporation" means a corporation described in section 1361(a)(1) of the United States Internal Revenue Code of 1986.

History. Acts 1997, No. 1331, § 2.

U.S. Code. The Economic Opportunity Act of 1964, referred to in this section, is codified as 42 U.S.C.S. § 2701 et seq.

Section 1361(a)(1), of the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C.S. § 1361(a)(1).

15-5-1303. Affordable housing assistance activities and affordable housing units — Business firms proposing to provide — Procedure for approval and tax credit.

(a) Any business firm which engages in providing affordable housing assistance activities in the State of Arkansas shall receive a tax credit as provided in § 15-5-1304 if the Arkansas Development Finance Authority or its delegate approves a proposal submitted by one (1) or more business firms for the provision of affordable housing units.

(b) The proposal shall set forth:

(1) A program of affordable housing to be conducted;

(2) The location and number of affordable housing units;

(3) The neighborhood area to be served;

(4) Why the program is needed;

(5) The time period for which affordable housing units shall be provided;

(6) The estimated amount to be invested in the program;

(7) Plans for implementing the program; and

(8) A list of the business firms proposing to provide affordable housing assistance activities which are a part of the proposal.

(c) In the case of rental units, all proposals approved by the authority shall require a land-use restriction agreement stating the provision of affordable housing on the property for a time period deemed reasonable by the authority.

(d)(1) In the case of owner-occupied units, all proposals approved by the authority shall require a land-use restriction agreement for a time period deemed reasonable by the authority requiring any subsequent owner, except a lender with a security interest in the property, to be an owner-occupant whose income at the time of acquisition is at or below the level described in § 15-5-1302 and further requiring that the acquisition price to any subsequent owner shall not exceed by more than a five percent (5%) annual appreciation the acquisition price to the original, eligible owner at the time tax credits are first claimed.

(2) The restriction shall be approved by the property owner and shall be binding on any subsequent owner of the property unless otherwise approved by the authority.

(e) In approving a proposal, the authority may authorize the use of tax credits by one (1) or more of the business firms listed in the proposal and shall establish specific requirements regarding the degree of completion of affordable housing assistance activities necessary to be eligible for tax credits provided under this section.

(f) If, in the opinion of the authority or its delegate, a business firm's investment can be made more consistently with the purposes of this section through contributions to a neighborhood organization, tax credits may be allowed as provided in this section.

(g) The authority or its delegate is authorized to promulgate rules and regulations for:

(1) Establishing criteria for evaluating such proposals by business firms for approval or disapproval;

(2) Establishing housing priorities for approval or disapproval of such proposals by business firms, and;

(3) The certification of eligibility for tax credits authorized under this section.

(h) The decision of the authority or its delegate to approve or disapprove a proposal pursuant to this section shall be in writing, and if approved, the maximum credit allowable to the business firm shall be stated.

(i) A copy of the decision of the authority or its delegate shall be transmitted to the Director of the Department of Finance and Administration and to the Governor.

(j) A copy of the certification approved by the authority and a statement of the total amount of credits approved by the authority, the amount of credits previously taken by the taxpayer, and the amount being claimed for the current tax year shall be filed in a manner and form designated by the director for any tax year in which a tax credit is being claimed.

History. Acts 1997, No. 1331, § 3.

15-5-1304. Tax credits authorized — Amount allowed annually — Exceeded when — Upper limits set — Carryover permitted.

(a)(1) For proposals approved under § 15-5-1303, the amount of the tax credit shall not exceed thirty percent (30%) of the total amount invested in affordable housing assistance activities by a business firm.

(2) Any tax credit not used in the period for which the credit was approved may be carried forward to any of the five (5) subsequent taxable years until the full credit has been allowed.

(3) The total amount of tax credits granted for programs approved under § 15-5-1303 shall not exceed seven hundred fifty thousand dollars (\$750,000) in any taxable year.

(4) For taxable year 1997, at least one-half (½) of the tax credits shall be designated by the Arkansas Development Finance Authority to the affordable housing assistance activities in counties declared disaster areas by the Governor.

(b)(1) For any year during the compliance period indicated in the land-use restriction agreement, the owner of the affordable housing rental units for which a credit is being claimed shall certify to the authority that all tenants renting claimed units are income-eligible for the affordable housing units and that the rentals for each claimed unit are affordable in compliance with the provisions of § 15-5-1302.

(2) The authority is authorized, in its discretion, to audit the records and the accounts of the owner to verify the certification.

(c)(1) In the case of owner-occupied affordable housing units, the qualifying owner-occupant, before the end of the first year in which credits are claimed, shall certify to the authority that the occupant is income eligible during the preceding two (2) years and at the time of the initial purchase contract, but not thereafter.

(2) The qualifying owner-occupant shall further certify to the authority before the end of the first year in which credits are claimed that during the compliance period indicated in the land-use restriction agreement, the cost of the affordable housing unit to the occupant for the claimed unit can reasonably be projected to be in compliance with the provisions of § 15-5-1302.

(3) Any succeeding owner-occupant acquiring the affordable housing unit during the compliance period indicated in the land-use restriction agreement shall make the same certification.

History. Acts 1997, No. 1331, § 4.

15-5-1305. Rules and regulations.

The Director of the Department of Finance and Administration and the Arkansas Development Finance Authority shall promulgate rules and regulations necessary to administer the provisions of this subchapter. No rule or portion of a rule promulgated under the authority of this subchapter shall become effective until it has been approved by the director in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1997, No. 1331, § 5.

SUBCHAPTER 14 — VENTURE CAPITAL INVESTMENT ACT OF 2001

SECTION.

- 15-5-1401. Title.
- 15-5-1402. Purpose.
- 15-5-1403. Definitions.
- 15-5-1404. Designated investor group.
- 15-5-1405. Guaranty.

SECTION.

- 15-5-1406. Tax credits.
- 15-5-1407. Registration of tax credits.
- 15-5-1408. Annual report.
- 15-5-1409. Powers of the Arkansas Development Finance Authority.

Effective Dates. Acts 2001, No. 1791, § 13: Apr. 19, 2001. Emergency clause provided: “It is found and determined by the Eighty-Third General Assembly that there is an urgent need to provide additional economic development capital to promote the continued expansion of industry within the state by providing funds for economic growth. Therefore, an emergency is declared to exist and this act being necessary for the immediate preser-

vation of the public peace, health and safety shall be effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

15-5-1401. Title.

This subchapter shall be known and may be cited as the “Venture Capital Investment Act of 2001”.

History. Acts 2001, No. 1791, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Comment: The Venture Capital Investment Act of 2001: Arkansas's Vision for Economic Growth, 56 Ark. L. Rev. 397.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Natural Resources, 24 U. Ark. Little Rock L. Rev. 513.

15-5-1402. Purpose.

The State of Arkansas desires to increase the availability of equity and near-equity capital for emerging, expanding, relocating, and restructuring enterprises in the state. Such investments will help strengthen the state's economic base and create jobs.

History. Acts 2001, No. 1791, § 2.

15-5-1403. Definitions.

As used in this subchapter:

(1) "Authority" means the Arkansas Development Finance Authority;

(2) "Bond guaranty" means a special obligation of the Bond Guaranty Reserve Account as defined in § 15-5-403(8);

(3) "Capital guaranty" means the guaranty provided by the authority under § 15-5-1405;

(4) "Certificate" means a document executed by the authority extending a capital guaranty to the designated investor group;

(5) "Designated investor group" means the investor group selected by the authority under this subchapter;

(6) "Equity capital" means capital invested in common or preferred stock, royalty rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private businesses;

(7) "Investor group" means any individual, corporation, partnership, limited liability company, or other lawfully organized entity;

(8) "Near-equity capital" means capital invested in unsecured, undersecured, subordinated, or convertible loans or debt securities;

(9) "Person" means any individual, corporation, partnership, or other lawfully organized entity;

(10) "Revolving fund" means a bank account:

(A) Created by the designated investor group in a financial institution located in this state; and

(B) Used solely as provided in this subchapter; and

(11) "Tax credit" means an income tax credit granted to the authority under this subchapter.

History. Acts 2001, No. 1791, § 3.

15-5-1404. Designated investor group.

(a)(1) The Arkansas Development Finance Authority shall solicit from investor groups investment plans for the raising and investing of capital in accordance with the requirements of this subchapter.

(2) Investment plans submitted shall address the investor group's:

- (A) Level of experience;
- (B) Quality of management;
- (C) Investment philosophy and process;
- (D) Probability of success in fund raising; and
- (E) Plan for achieving the purposes of this subchapter.

(b)(1) The authority shall consider and select the investment plans and shall select and certify as the designated investor group the one (1) investor group deemed best qualified to:

(A) Capitalize the private revolving fund with the most effective and efficient utilization of the capital guaranty;

(B) Invest the capital in private seed and venture capital entities in a manner mobilizing a wide variety of equity and near-equity capital investments in ventures promoting the economic development of Arkansas; and

(C) Help build a significant, fiscally strong, and permanent resource to serve the objectives expressed in this subsection.

(2) The designated investor group must have a manager who is a person with demonstrated substantial successful experience in design, implementation, and management of seed and venture capital investment programs and in capital formation.

(c) The authority, in its discretion, shall have the right to:

- (1) Remove and replace the chosen designated investor group; and
- (2) Effect the assignment of all assets, liabilities, guaranties, and other contracts of this program to a new designated investor group.

History. Acts 2001, No. 1791, § 4.

15-5-1405. Guaranty.

(a) The Arkansas Development Finance Authority shall have the power to extend a capital guaranty of obligations issued by the designated investor group.

(b) The capital guaranty shall be secured by:

(1) The authority guaranty, subject to the limits establish by the authority; and

(2) Tax credits.

(c) The authority may charge a reasonable fee for costs and the fair compensation of risk associated with its guaranty.

History. Acts 2001, No. 1791, § 5.

15-5-1406. Tax credits.

(a) The State of Arkansas shall issue income tax credits that may be used to reduce the tax liability of a person, firm, or corporation.

(b)(1) Income tax credits transferred by the Arkansas Development Finance Authority shall only be used to offset payment of reported state income tax liability and are not refundable.

(2) Unused credit may be carried forward for five (5) additional taxable years after the taxable year in which the credit was first used.

(b) Tax credits against liabilities shall be limited to the amount that would otherwise be collected and allocated to the Treasurer of State.

(c) The total amount of credits issued and transferable to the authority is sixty million dollars (\$60,000,000).

(d) The credits issued under this subchapter shall be transferred only after:

(1) The authority guaranty funds, subject to limits established by the authority, are exhausted;

(2)(A) The authority presents its recommendations concerning the issuance of tax credits to the State Board of Finance.

(B) These recommendations shall include:

(i) The amount of tax credits to be transferred to the parties with whom the authority has contracted;

(ii) The parties to whom the credits will be transferred; and

(iii) Other information requested by the board; and

(3) The board reviews and approves the issuance of the tax credits.

(e)(1) The authority shall immediately notify in writing the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Governor if any tax credit is transferred in conjunction with a legitimate call on an authority guarantee.

(2) The authority shall not be required to make such a notification for transfers to subsequent transferees.

(f) The authority shall determine the amount of income tax credits to be transferred by the authority under this subchapter, up to a total amount of ten million dollars (\$10,000,000) in any one (1) fiscal year, and may negotiate for sale of the credits subject only to the limits imposed under this subchapter.

(g) The authority shall clearly indicate upon the face of the document transferring the tax credit the principal amount of the tax credit.

(h) The authority may pay a fee in connection with the purchase by the authority of an option or other agreement under which the transfer of the tax credits authorized under this subchapter may be made.

(i) The authority shall have the power to make any contract, execute any document, charge reasonable fees for any services rendered, perform any act, or enter into any financial or other transaction necessary in order to carry out its mission.

(j)(1) The authority may employ any person as required for:

(A) Proper implementation of this subchapter;

(B) The management of its assets; or

(C) The performance of any function authorized or required by this subchapter or necessary for the accomplishment of any function.

(2) The person employed shall be selected by the authority based upon outstanding knowledge and leadership in the field for which the person performs services for the authority.

History. Acts 2001, No. 1791, § 6.

15-5-1407. Registration of tax credits.

(a) The Arkansas Development Finance Authority, in conjunction with the Revenue Division of the Department of Finance and Administration, shall develop a system for registration of all tax credits claimed under this subchapter.

(b) The system shall verify that any:

(1) Tax credit claimed upon a tax return is valid and properly taken in the year of claim; and

(2) Transfer of the tax credit is made in accordance with the requirements of this subchapter.

History. Acts 2001, No. 1791, § 7.

15-5-1408. Annual report.

The designated investor group shall publish an annual report within six (6) months after the close of its fiscal year, which shall:

(1) Include its annual audit of the activities conducted by the designated investor group;

(2) Be presented in writing, and by testimony if requested, to the:

(A) Governor;

(B) House Committee on Agriculture, Forestry, and Economic Development and the Senate Committee on Agriculture, Forestry, and Economic Development;

(C) Arkansas Development Finance Authority;

(3) Document and review the progress of the designated investor group in implementing its investment plan; and

(4) List any use, redemption, or transfer of tax credits allowed under this subchapter.

History. Acts 2001, No. 1791, § 8.

A.C.R.C. Notes. The names of the House Interim Committee on Agriculture and Economic Development and the Senate Interim Committee on Agriculture and Economic Development, formerly referred

to in this section, were changed by Acts 2001, No. 960, § 1, to the House Interim Committee on Agriculture, Forestry, and Economic Development and the Senate Interim Committee on Agriculture, Forestry, and Economic Development.

15-5-1409. Powers of the Arkansas Development Finance Authority.

The Arkansas Development Finance Authority shall have the power to promulgate regulations and make any contract, execute any docu-

ment, perform any act, or enter into any financial or other transaction necessary to implement this subchapter.

History. Acts 2001, No. 1791, § 9.

SUBCHAPTER 15 — ARKANSAS BROWNFIELD REVOLVING LOAN FUND ACT

SECTION.	SECTION.
15-5-1501. Title.	15-5-1506. Loans — Grants.
15-5-1502. Definitions.	15-5-1507. Allocation from Treasurer of State.
15-5-1503. Brownfield Revolving Loan Fund — Establishment — Uses.	15-5-1508. Security for bonds.
15-5-1504. Brownfield Revolving Loan Fund — Sources — Deposits.	15-5-1509. Administrative fees.
15-5-1505. Brownfield Revolving Loan Fund — Administration.	15-5-1510. Collection of fees.
	15-5-1511. Regulations.

Effective Dates. Acts 2003, No. 1194, § 2: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is an urgent need to return abandoned, idled, and underused industrial, commercial, and agricultural properties, otherwise known as Brownfield sites, to productive uses; that the state would benefit by allowing grant funds awarded from the federal government, as well as future grant awards and other

moneys allocated to the Department of Environmental Quality, to be used to clean up Brownfield sites; that a successful revolving loan fund program will assist the department to reach its goal of returning Brownfield sites to productive uses. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

15-5-1501. Title.

This subchapter may be titled as the “Arkansas Brownfield Revolving Loan Fund Act”.

History. Acts 2003, No. 1194, § 1.

15-5-1502. Definitions.

As used in this subchapter:

- (1) “Authority” means the Arkansas Development Finance Authority or its successor;
- (2) “Department” means the Arkansas Department of Environmental Quality or its successor; and
- (3) “Fund” means the Brownfield Revolving Loan Fund.

History. Acts 2003, No. 1194, § 1.

15-5-1503. Brownfield Revolving Loan Fund — Establishment — Uses.

(a)(1) There is established on the books of the Arkansas Development Finance Authority a special restricted fund to be known as the “Brownfield Revolving Loan Fund”, which shall be maintained by the authority and administered by the Arkansas Department of Environmental Quality for the purposes stated under this subchapter.

(2) The authority may create subaccounts within the fund, as necessary.

(b) Moneys in the fund shall be expended in a manner consistent with the terms and conditions of applicable federal and state grants and may be used to:

(1) Provide loans to prospective and actual purchasers of abandoned industrial, commercial, or agricultural sites for assessments, investigations, and remedial actions under § 8-7-1101 et seq.;

(2) Provide grants for assessments, investigations, and remedial actions under § 8-7-1101 et seq. or as consistent with federal law;

(3) Secure the payment of the principal, premium, and interest on and to pay costs incurred in connection with bonds issued by the authority if the net proceeds of the bonds are deposited into the fund;

(4) Fund administrative expenses relating to implementing this subchapter; and

(5) Provide for any other expenditures consistent with applicable federal or state law.

History. Acts 2003, No. 1194, § 1.

15-5-1504. Brownfield Revolving Loan Fund — Sources — Deposits.

(a) The following moneys shall be deposited directly into the Brownfield Revolving Loan Fund:

(1) Grants from the federal government or federal agencies allotted to the state for capitalization of the Brownfield Revolving Loan Fund;

(2) State matching grants;

(3) Proceeds of bonds issued by the Arkansas Development Finance Authority under this subchapter;

(4) Loan payments of principal, interest, and premiums under this subchapter;

(5) Any money received from the Hazardous Substance Remedial Action Trust Fund;

(6) Any money received by the state as a gift or donation to the Brownfield Revolving Loan Fund;

(7) Any interest earned upon money deposited into the Brownfield Revolving Loan Fund; and

(8) Any other money legally designated for the Brownfield Revolving Loan Fund.

(b)(1) All moneys received after July 1, 2003, from whatever source for direct deposit into the Brownfield Revolving Loan Fund or paid to

the authority for deposit in the Brownfield Revolving Loan Fund are cash funds restricted in their use and shall not be deposited in the State Treasury or deemed to be a part of the State Treasury for the purposes of Arkansas Constitution, Article 5, § 29; Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any other constitutional or statutory provisions but shall be held by the authority and used solely for the purposes stated under this subchapter.

(2) All moneys received by the authority under this subchapter shall be deposited into the Brownfield Revolving Loan Fund when received unless otherwise provided by state law.

(3)(A) Interest and other moneys received from the investment of moneys, the purchase of bonds, notes, or other evidences of indebtedness, or the making of loans with moneys in the Brownfield Revolving Loan Fund shall be cash funds to be used solely as authorized under this subchapter.

(B) Interest earnings that are transferred directly to the authority shall be cash funds to be used solely as authorized under this subchapter.

(c) The authority may accept grants for deposit into the Brownfield Revolving Loan Fund from any state or federal agency, municipality, corporation, foundation, individual, or authority and may accept any appropriation from the State Treasury that the authority received before, as of, or after July 1, 2003.

History. Acts 2003, No. 1194, § 1.

15-5-1505. Brownfield Revolving Loan Fund — Administration.

(a)(1) The Brownfield Revolving Loan Fund shall be administered by the Arkansas Department of Environmental Quality, with the Arkansas Development Finance Authority serving as agent for the department.

(2) The department may establish procedures to administer the fund and the programs financed, in whole or in part, with moneys from the fund that are used for the purposes stated under this subchapter.

(3) The department may enter into contracts and other agreements in connection with the operation of the fund, including contracts and agreements with federal agencies, local governmental entities, the authority, and other persons, to implement this subchapter.

(b) The department shall have full authority to operate the fund and may make withdrawals as necessary to achieve the intended purposes of this subchapter.

History. Acts 2003, No. 1194, § 1.

15-5-1506. Loans — Grants.

(a) With approval of the Arkansas Department of Environmental Quality, the Arkansas Finance Development Corporation may:

(1) Make secured or unsecured loans from the Brownfield Revolving Loan Fund;

- (2) Award grants from the fund;
 - (3) Collect interest on any loans issued; and
 - (4) Assess penalties on late loan payments.
- (b) Loans issued under this subchapter may contain an acceleration clause.

History. Acts 2003, No. 1194, § 1.

A.C.R.C. Notes. The Arkansas Finance Development Corporation, referred to in this section, is not created in any section

of the Arkansas Code. The intended reference was probably to the Arkansas Development Finance Authority.

15-5-1507. Allocation from Treasurer of State.

(a)(1) The Arkansas Development Finance Authority may accept moneys from the Treasurer of State for deposit into the Brownfield Revolving Loan Fund, as provided by law, to be used for the purposes authorized under this subchapter.

(2) Federal or state grants transferred directly to the authority for deposit into the fund are declared to be cash funds restricted in their use solely for the purposes under this subchapter.

(b) Notwithstanding the provisions of §§ 19-6-108 and 19-6-601, federal or state grants received by the Treasurer of State for purposes authorized under this subchapter are declared to be cash funds to be used solely as authorized under this subchapter.

(c)(1) Moneys received under this section shall not be considered to be a part of the State Treasury for the purposes of:

- (A) Arkansas Constitution, Article 5, § 29;
- (B) Arkansas Constitution, Article 16, § 12;
- (C) Arkansas Constitution, Amendment 20; or
- (D) Any other constitutional or statutory provision.

(2) The Treasurer of State shall not deposit moneys received under this section into the State Treasury but shall remit the moneys to the authority for deposit in the fund.

History. Acts 2003, No. 1194, § 1.

15-5-1508. Security for bonds.

The Arkansas Development Finance Authority may use the moneys in the Brownfield Revolving Loan Fund and the assets acquired with moneys in the fund to secure payment of the principal, premium, and interest on bonds issued by the authority if the net proceeds of the bonds are deposited into the fund.

History. Acts 2003, No. 1194, § 1.

15-5-1509. Administrative fees.

(a) The Arkansas Department of Environmental Quality and the Arkansas Development Finance Authority may establish fees for their

respective administrative services under this subchapter, including the costs of financing loans and awarding grants under this subchapter.

(b) The authority to establish fees under this section is supplemental to the authority granted to the department or the authority under other laws.

History. Acts 2003, No. 1194, § 1.

15-5-1510. Collection of fees.

(a)(1) With approval of the Arkansas Department of Environmental Quality, the Arkansas Development Finance Authority may collect administrative fees and remit the fees directly to the authority within fifteen (15) days after each payment is collected.

(2) The authority shall remit any administrative fee owed to the department, and the fees shall be deposited into the Brownfield Revolving Loan Fund on a quarterly basis.

(3) Any administrative fees owed to the authority shall not be deposited into the fund.

History. Acts 2003, No. 1194, § 1.

15-5-1511. Regulations.

The Arkansas Department of Environmental Quality may adopt regulations as necessary to implement this subchapter.

History. Acts 2003, No. 1194, § 1.

SUBCHAPTER 16 — ARKANSAS RISK CAPITAL MATCHING FUND ACT OF 2007

SECTION.	SECTION.
15-5-1601. Title.	15-5-1606. Private sector advisory committee.
15-5-1602. Legislative intent.	15-5-1607. Review committee.
15-5-1603. Definitions.	15-5-1608. Annual report.
15-5-1604. Creation of Arkansas Risk Capital Matching Fund.	15-5-1609. Powers of the trustees of the Venture Capital Investment Trust.
15-5-1605. Funding of Arkansas Risk Capital Matching Fund.	

Effective Dates. Acts 2007, No. 1025, § 2: Apr. 4, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that economic development and the creation of jobs is a critical need for the State of Arkansas; that this act will assist in the development and retention of technology-based enterprises; and that it is critical that the provisions of this act become effective as soon as possible to accomplish its legislative intent. There-

fore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 791, § 7: Apr. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that economic development and the creation of jobs is a critical need for the State of Arkansas, that this act will provide a more flexible and efficient approach to assisting in the development and retention of technology-based enterprises, and that it is critical that the provisions of this act become effective as soon as possible to accomplish

its intent. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-5-1601. Title.

This subchapter shall be known and may be cited as the "Arkansas Risk Capital Matching Fund Act of 2007".

History. Acts 2007, No. 1025, § 1.

15-5-1602. Legislative intent.

The General Assembly finds:

(1) There is a need to strengthen and advance the infrastructure that supports and accelerates the advancement of the growth of technology-based enterprises in Arkansas;

(2) There exists a shortage of risk capital and financial assistance at the early stages of development for technology-based enterprises;

(3) An improved investment climate for early stage technology-based enterprises is expected to increase, advance, and accelerate the growth and development of technology-based enterprises in Arkansas;

(4) The ultimate goal of supporting technology-based enterprises is to convert research and development activities and early stage technology-based enterprises into viable commercial ventures; and

(5) The provision of financial investment and assistance to aid early stage technology-based enterprises is expected to strengthen the economic base of the State of Arkansas and create better paying jobs, thereby benefiting all citizens of the state.

History. Acts 2007, No. 1025, § 1.

15-5-1603. Definitions.

As used in this subchapter:

(1) "Angel investor" means a high-net-worth individual or a network of high-net-worth individuals who invest in early stage technology-based enterprises;

(2) "Enterprise Development Account" means a separate account bearing that name and to be maintained within the Arkansas Risk

Capital Matching Fund, the moneys in which account shall be used for the purposes and in the manner prescribed by this subchapter;

(3) “Equity capital” means capital invested in common stock or preferred stock, royalty rights, limited partnership interests, limited liability company interests, and any other equity, securities, or rights that evidence ownership or investment in private enterprises;

(4) “Near-equity capital” means capital invested in unsecured, undersecured, subordinated, or convertible loans or debt securities;

(5) “Private sector advisory committee” means a committee composed of individual representatives from the private sector in Arkansas, established to offer assistance and advice to the trustees of the fund in:

(A) Developing rules; and

(B) Reviewing:

(i) Investments under consideration by the review committee; and

(ii) Annual reports from the trustees of the Venture Capital Investment Trust;

(6) “Review committee” means a committee composed of the President of the Arkansas Development Finance Authority, the President of the Arkansas Science and Technology Authority, and the Director of the Arkansas Economic Development Commission;

(7) “Technology-based enterprises” means a group of growing businesses in one (1) or more of the following business sectors:

(A) Advanced materials and manufacturing systems;

(B) Agriculture, food, and environmental sciences;

(C) Biotechnology, bioengineering, medical technology, and life sciences;

(D) Information technology;

(E) Transportation logistics; and

(F) Biobased products;

(8) “Technology Validation Account” means the separate account bearing that name and to be maintained as a separate account within the Arkansas Risk Capital Matching Fund, the moneys in which account shall be used for the purposes and in the manner prescribed by this subchapter; and

(9) “Venture Capital Investment Trust” means the public trust formed July 21, 2003, under § 28-72-201 et seq., the trustees of which are the President of the Arkansas Development Finance Authority, the President of the Arkansas Science and Technology Authority, and the Director of the Department of Finance and Administration and that has as a principal purpose increasing the availability of equity capital and near-equity capital for emerging and expanding enterprises in the State of Arkansas.

History. Acts 2007, No. 1025, § 1; 2009, No. 791, § 2.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

“Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic

Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic

Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

Amendments. The 2009 amendment deleted (4), which defined “fund manager,” redesignated the subsequent subsection accordingly, and inserted (5).

15-5-1604. Creation of Arkansas Risk Capital Matching Fund.

(a) There is established the Arkansas Risk Capital Matching Fund, and within that fund the Enterprise Development Account and the Technology Validation Account, which fund and accounts shall be held by and maintained as a separate fund and separate accounts within the Venture Capital Investment Trust.

(b)(1) The Arkansas Risk Capital Matching Fund is created for the purpose of providing financial assistance to technology-based enterprises located in Arkansas, with the expectation of developing jobs paying in excess of county and state average wages, improving the growth, development, and advancement of technology-based enterprises, and converting research and development activities and early stage technology-based enterprises into viable and productive commercial ventures.

(2) The Arkansas Risk Capital Matching Fund shall target the financial assistance toward those technology-based enterprises that are in the early stages of development and that are not yet able to attract adequate private sources of traditional financing or venture or investor-backed capital for their growth and development.

History. Acts 2007, No. 1025, § 1.

15-5-1605. Funding of Arkansas Risk Capital Matching Fund.

(a) The trustees of the Venture Capital Investment Trust may accept moneys and funds for the Arkansas Risk Capital Matching Fund from any source.

(b) Moneys and funds received by the trustees of the trust for the fund shall be dedicated and used solely as authorized in this subchapter.

(c)(1) Moneys and funds received by the Arkansas Development Finance Authority, the Arkansas Science and Technology Authority, or

the Arkansas Economic Development Commission designated for use or ownership by the fund shall be deposited to the trust and held in the Technology Validation Account and the Enterprise Development Account of the fund, as applicable and as specified in this subchapter, until used for the purposes of this subchapter.

(2)(A) Moneys deposited to the trust for the purposes of providing financial assistance to technology-based enterprises under this subchapter shall be allocated between the Technology Validation Account and the Enterprise Development Account according to a ratio recommended by the private sector advisory committee and approved by the trustees of the trust from time to time.

(B) Until a different ratio is approved by the trustees, moneys shall be allocated as follows:

(i) Seventy-five percent (75%) of the moneys shall be allocated to the Enterprise Development Account; and

(ii) Twenty-five percent (25%) of the moneys shall be allocated to the Technology Validation Account.

(d) The trustees of the trust will establish separate accounting and tracking and will be responsible for administering the moneys in the Enterprise Development Account and the Technology Validation Account.

(e) Proceeds received by the trust as a return on or in full or partial liquidation of any investments made from either the Enterprise Development Account or the Technology Validation Account, subject to § 15-5-1607, shall be restricted in their use and dedicated and retained in either the Enterprise Development Account or the Technology Development Account or allocated between those accounts, as recommended by the private sector advisory committee and approved by the trustees of the trust and not commingled with other moneys held by the trust, and such proceeds may be used and reused from time to time for the purposes specified for moneys held in such accounts as provided by this subchapter.

(f) Moneys shall be withdrawn from either the Enterprise Development Account or the Technology Validation Account, as appropriate, upon requisition from the trustees of the trust for achieving the purposes of this subchapter.

(g)(1) Moneys and funds within the Technology Validation Account shall be used within the parameters expressed in this subsection for the purpose of assisting very early stage technology-based enterprises in developing or achieving one (1) or more of the following:

(A) A sound business plan;

(B) Market research;

(C) Marketing plans;

(D) Software or hardware and equipment relating to the particular technology or technologies on which the technology-based enterprise is being built;

(E) Development of laboratory, preclinical, or other testing procedures and results;

(F) Attaining proof of concept;

(G) Building of experimental or pilot-scale models of products or facilities; or

(H) Achieving other similar milestones required for the advancement of very early stage technology-based enterprises as approved by the private sector advisory committee and the review committee.

(2) Financial assistance provided from the Technology Validation Account may be made in the form of equity capital or near-equity capital, as recommended by the private sector advisory committee and approved by the review committee.

(3) Financial assistance made from the Technology Validation Account may but shall not be required to be structured or approved based on a market rate-based rate of return or other benchmark rate of return expected to be achieved with respect to an investment, it being the primary purpose of investments made from the Technology Validation Account, within the reasonable discretion of the review committee, to assist in validating the technology or technologies on which these enterprises rely or are based, so that such enterprises may be better enabled to attract additional investments by angel investors or other investors.

(4) Financial assistance made from the Technology Validation Account shall be required to be matched by a contribution of equity capital or near-equity capital, or other sources of funds as set forth in this section, in some proportion as determined by the review committee on a case-by-case basis or as a matter of rule, but on not less than a one-to-nine (1:9) basis with not less than one dollar (\$1.00) from the applicant technology-based business for every nine dollars (\$9.00) from the account, from:

(A) One (1) or more owners of any technology-based enterprise receiving financial assistance from the Arkansas Risk Capital Matching Fund;

(B) Proceeds of state or federal research grants, including without limitation federal Small Business Innovation Research grants, Small Business Technology Transfer Program grants, Department of Defense research grants, National Institutes of Health research grants, or from any successor programs or agency grants; or

(C) Community-based investment sources.

(5) Any technology-based enterprise receiving financial assistance to be disbursed from the Technology Validation Account shall have a business valuation as represented by the technology-based enterprise and approved by the review committee of not more than two million dollars (\$2,000,000) determined prior to the making of the investment from the Technology Validation Account and as the maximum valuation may be adjusted from year to year by the review committee on recommendation of the private sector advisory committee to take into account the effects of inflation.

(6) The maximum investment that may be made to any one (1) technology-based enterprise from the Technology Validation Account

shall be one hundred thousand dollars (\$100,000), as may be adjusted from year to year by the review committee on recommendation of the private sector advisory committee to take into account the effects of inflation.

(h)(1) Moneys and funds within the Enterprise Development Account shall be used within the parameters expressed in this subsection for the purpose of assisting early stage technology-based enterprises in augmenting the investments made or proposed to be made in such enterprises from angel investors and other individual or institutional investors where established milestones for further development of such enterprises are set forth in a business plan to be approved by the fund manager and the review committee.

(2) Financial assistance provided from the Enterprise Development Account may be made in the form of equity capital or near-equity capital, as recommended by the private sector advisory committee and approved by the review committee, and shall be on substantially the same terms and conditions as other investments proposed to be made by angel investors or other investors contemporaneously with the assistance to be provided from the fund.

(3) Financial assistance made from the Enterprise Development Account shall be required to be matched by investments from angel investors or other investors in some proportion, as determined by the review committee on a case-by-case basis or as a matter of rule, but on not less than a four-to-one (4:1) basis with not less than four dollars (\$4.00) from the applicant technology-based business for every one dollar (\$1.00) from the account.

(4) Any technology-based enterprise receiving financial assistance to be disbursed from the Enterprise Development Account shall have a business valuation as represented by the technology-based enterprise and approved by the review committee of not more than twenty-five million dollars (\$25,000,000), determined prior to the making of the investment from the Enterprise Development Account and as the maximum valuation may be adjusted from year to year by the review committee on recommendation of the private sector advisory committee to take into account the effects of inflation.

(5) The maximum investment that may be made to any one (1) technology-based enterprise from the Enterprise Development Account fund shall be seven hundred fifty thousand dollars (\$750,000), as may be adjusted from year to year by the review committee on recommendation of the private sector advisory committee to take into account the effects of inflation.

History. Acts 2007, No. 1025, § 1; 2009, No. 481, § 4; 2009, No. 791, § 3.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided: "Department of Economic Development renamed Arkansas Economic Development Commission."

"(a)(1) The Department of Economic

Development, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned

to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

Amendments. The 2009 amendment by No. 481 deleted “each of” following “moneys in” in (d).

The 2009 amendment by No. 791 rewrote (c)(2); substituted “either the Enterprise Development Account ... of the Venture Capital Investment Trust” for “the appropriate account from which the investment was made” in (e); substituted “private sector advisory committee” for “fund manager” throughout (g) and (h); deleted “fund manager and the” preceding “review committee” in (g)(3) and (g)(5); inserted “with not less than one (1) dollar from the applicant technology-based business for every nine (9) dollars from the account” in (g)(4); in (g)(5), inserted “represented by the technology-based enterprise and,” and substituted “two million dollars (\$2,000,000)” for “one million five hundred thousand dollars (\$1,500,000)”; inserted “the maximum valuation may be” in (g)(5) and (h)(4); substituted “four-to-one (4:1) basis with not less than four dollars (\$4.00) from the applicant technology-based business for every one dollar (\$1.00) from the account” for “one-to-four (1:4) basis” in (h)(3); inserted “represented by the technology-based enterprise and” in (h)(4); and made minor stylistic changes.

15-5-1606. Private sector advisory committee.

(a) The trustees of the Venture Capital Investment Trust shall appoint a private sector advisory committee, to consist of not less than five (5) nor more than nine (9) individuals from the private sector in Arkansas who have demonstrated personal or professional experience in assisting one (1) or more of the financing, growth, and development of very early stage and early stage technology-based businesses.

(b)(1) The private sector advisory committee shall serve for terms as determined by the trustees of the trust.

(2) Members of the private sector advisory committee may serve successive terms.

(3) Members of the private sector advisory committee may be reimbursed for actual expenses incurred in the performance of their duties as determined by the trustees of the trust.

(c) The trustees of the trust in their discretion shall have the right to remove and replace the members of the private sector advisory committee.

(d) The trustees of the trust, in consultation with the private sector advisory committee and the review committee, shall develop guidelines for investments of Arkansas Risk Capital Matching Fund assets in technology-based enterprises consistent with the provisions of this subchapter.

(e) It shall not be a prohibited conflict of interest for a member of the private sector advisory committee to have a direct or indirect pecuniary

interest in any technology-based enterprise applying for assistance from the Arkansas Risk Capital Matching Fund so long as the member:

- (1) Makes full disclosure of his or her interest before the consideration of the application by the private sector advisory committee;
- (2) Does not vote on the application; and
- (3) Excuses himself or herself from any deliberations of the private sector advisory committee regarding the application.

History. Acts 2007, No. 1025, § 1; 2009, No. 791, § 4.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided: "Arkansas Economic Development Commission renamed Arkansas Economic Development Council.

"(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

"(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

"(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 7, provided: "The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act."

Amendments. The 2009 amendment rewrote (a) through (c); substituted "private sector advisory committee" for "fund manager" in (d); and added (e).

15-5-1607. Review committee.

The review committee shall:

- (1) Recommend to the trustees the payment of fees and expenses out of the Arkansas Risk Capital Matching Fund for the operation of the fund; and
- (2) Review and give final approval to the recommendations made by the private sector advisory committee with regard to fund investments.

History. Acts 2007, No. 1025, § 1; 2009, No. 791, § 5.

Amendments. The 2009 amendment deleted (1) and redesignated the subdivisions; deleted "and the payment of the

fund manager" following "operation of the fund" in present (1); and substituted "private sector advisory committee" for "fund manager" in present (2).

15-5-1608. Annual report.

The trustees of the Venture Capital Investment Trust shall publish an annual report within five (5) months after the close of each fiscal year that shall:

- (1) Include an annual audit of the Arkansas Risk Capital Matching Fund's activities conducted by the trustees with the assistance of the review committee and the private sector advisory committee;

(2) Be presented in writing, and by testimony if requested, to the:

- (A) Governor;
- (B) House Committee on Agriculture, Forestry, and Economic Development;
- (C) Senate Committee on Agriculture, Forestry, and Economic Development;
- (D) Arkansas Development Finance Authority;
- (E) Arkansas Science and Technology Authority; and
- (F) Arkansas Economic Development Commission; and

(3) Document and review the progress of the trustees of the trust and the review committee in implementing the investment and financial assistance activities under this subchapter.

History. Acts 2007, No. 1025, § 1; 2009, No. 791, § 6.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

“Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

Amendments. The 2009 amendment, in the introductory language, substituted “trustees of the Venture Capital Investment Trust” for “fund manager” and substituted “five (5)” for “three (3)”; in (1), inserted “Arkansas Risk Capital Matching Fund’s” and substituted “trustees with the assistance of the review committee and the private sector advisory committee” for “fund manager”; in (3), substituted “trustees of the Arkansas Risk Capital Investment Trust and the review committee” for “fund manager” and substituted “activities under this subchapter” for “plan”; and made minor stylistic changes.

15-5-1609. Powers of the trustees of the Venture Capital Investment Trust.

The trustees of the Venture Capital Investment Trust shall have the power to promulgate guidelines and rules, and make any contract, execute any document, perform any act, or enter into any financial or other transaction necessary to implement this subchapter.

History. Acts 2007, No. 1025, § 1.

SUBCHAPTER 17 — ARKANSAS HOUSING TRUST FUND ACT OF 2009

SECTION.

- 15-5-1701. Title.
- 15-5-1702. Legislative intent.
- 15-5-1703. Definitions.
- 15-5-1704. Establishment of Arkansas Housing Trust Fund.
- 15-5-1705. Sources and deposits — Administration of Arkansas Housing Trust Fund — Responsibilities of the Arkansas Development Finance Authority.
- 15-5-1706. Creation of Arkansas Housing Trust Fund Advisory Committee.

SECTION.

- 15-5-1707. Roles and responsibilities of the Arkansas Housing Trust Fund Advisory Committee.
- 15-5-1708. Purposes and uses of the Arkansas Housing Trust Fund.
- 15-5-1709. Minimum requirements — Distribution of funds — Application evaluation guidelines.

15-5-1701. Title.

This subchapter shall be known and may be cited as the “Arkansas Housing Trust Fund Act of 2009”.

History. Acts 2009, No. 661, § 1.

15-5-1702. Legislative intent.

The General Assembly finds:

(1) That current economic conditions, the lack of affordable housing, and declining resources at all levels of government adversely affect the ability of the citizens of Arkansas to obtain safe, decent, and affordable housing;

(2) That the lack of affordable housing affects the abilities of communities to maintain and develop viable and stable economies; and

(3) That the establishment of the Arkansas Housing Trust Fund is intended:

(A) To provide a flexible source of funds for communities to address their affordable housing needs;

(B) To help families attain economic stability;

(C) To revitalize distressed neighborhoods and build healthy, vibrant communities by developing high-quality affordable housing;

(D) To leverage additional private investment in Arkansas communities;

(E) To contribute to economic growth through increased housing production, employment, and tax revenues, thereby benefiting all the citizens of the state;

(F) To alleviate deficiencies in the supply of safe, accessible, and affordable housing for the citizens of the state most likely, because of low incomes, to suffer from these deficiencies, including without limitation persons who are homeless, disabled, elderly, or victims of domestic violence; and

(G) To alleviate deficiencies in the supply of safe, accessible, and affordable housing for the citizens of the state living in rural areas.

History. Acts 2009, No. 661, § 1.

15-5-1703. Definitions.

As used in this subchapter:

(1) "Advisory committee" means the Housing Trust Fund Advisory Committee created in § 15-5-1706;

(2) "Authority" means the Arkansas Development Finance Authority;

(3) "Board" means the Board of Directors of the Arkansas Development Finance Authority;

(4) "Eligible activities" means activities eligible for funding by the Arkansas Housing Trust Fund, as set forth in this subchapter;

(5) "Eligible applicants" means persons or entities eligible to receive funds from the housing trust fund, as set forth in this subchapter;

(6) "Housing trust fund" means the Arkansas Housing Trust Fund created in § 15-5-1704; and

(7) "Median household income" means state or area median household income, as defined and adjusted annually by the United States Department of Housing and Urban Development.

History. Acts 2009, No. 661, § 1.

15-5-1704. Establishment of Arkansas Housing Trust Fund.

(a) There is established on the books of the Arkansas Development Finance Authority a special restricted fund, to be known as the "Arkansas Housing Trust Fund", which shall be maintained and administered by the authority for the purposes stated in this subchapter.

(b) All moneys deposited into the housing trust fund under this subchapter are cash funds restricted in their use and shall not be deposited into the State Treasury or deemed to be a part of the State Treasury for the purposes of Arkansas Constitution, Article 5, § 29, Article 16, § 12, or Amendment 20 or any other constitutional or statutory provisions but shall be held by the authority and used solely for the purposes stated under this subchapter.

History. Acts 2009, No. 661, § 1.

15-5-1705. Sources and deposits — Administration of Arkansas Housing Trust Fund — Responsibilities of the Arkansas Development Finance Authority.

(a) The following moneys shall be deposited into the Arkansas Housing Trust Fund:

(1) Money designated by the General Assembly or by the Governor for the purpose of funding the housing trust fund;

(2) Grants or other moneys from the federal government or federal agencies that can be used for the purpose of funding the housing trust fund;

(3) Any money received by the Arkansas Development Finance Authority or the state from private sources as a contribution, gift, or donation to the housing trust fund;

(4) Repayments of any loans made from the housing trust fund under this subchapter;

(5) Any interest or investment earnings on amounts held in the housing trust fund; and

(6) Any other money legally designated for the housing trust fund.

(b) The housing trust fund shall be maintained and administered by the authority. The authority is authorized and directed:

(1) To invest and reinvest all money held in the housing trust fund in investments under the authority's investment policies, pending its use for the purposes described in this subchapter;

(2) To keep books and records relating to the investment, interest earnings, and uses of moneys deposited into the housing trust fund;

(3) To establish procedures for the withdrawal, allocation, and use of the moneys held in the housing trust fund for the purposes described in this subchapter;

(4) To cause to be prepared an annual independent audit of the housing trust fund;

(5) To enter into contracts and agreements in connection with the operation of the housing trust fund, including contracts and agreements with federal agencies, local governmental entities, community developers, and other persons, to implement this subchapter;

(6) To develop rules for the competitive evaluation of projects seeking to receive moneys from the housing trust fund and as needed to implement this subchapter; and

(7) To engage in ongoing efforts to increase funding sources for the housing trust fund, including any additional ongoing state-dedicated funding source.

(c) The authority shall seek the input of the Arkansas Housing Trust Fund Advisory Committee created by § 15-5-1706, but the Board of Directors of the Arkansas Development Finance Authority shall have the final decision-making authority on all matters relating to the housing trust fund and the programs administered under this subchapter.

(d)(1) To reimburse the authority for its services in administering the housing trust fund, the authority shall be periodically paid a reasonable fee from amounts deposited to the housing trust fund.

(2) On an annual basis, the authority shall not be paid in excess of six percent (6%) of the total annual deposits to the housing trust fund or the average outstanding balance of the assets of the housing trust fund, whichever is greater.

History. Acts 2009, No. 661, §. 1.

15-5-1706. Creation of Arkansas Housing Trust Fund Advisory Committee.

(a)(1) There is created the Arkansas Housing Trust Fund Advisory Committee for the purpose of advising the staff and the Board of Directors of the Arkansas Development Finance Authority with respect to the Arkansas Housing Trust Fund.

(2) The members of the advisory committee shall be residents of the state and should, to the extent possible, reflect the demographics of the state with respect to geography, race, gender, and urban-rural mix.

(3) The members of the advisory committee shall be entitled to expense reimbursement under § 25-16-902 from amounts deposited into the housing trust fund.

(4) Each member of the advisory committee should have a demonstrated interest in the housing needs of individuals and families with low or moderate incomes and the revitalization of distressed neighborhoods.

(b) The advisory committee shall consist of eleven (11) members with the qualifications under § 15-5-1705 to be appointed by the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate, as follows:

(1) A representative of the financial industry, appointed by the Governor;

(2) A beneficiary of assistance in rental housing or home ownership, appointed by the Governor;

(3) An advocate for the homeless, appointed by the Governor;

(4) A representative of the real estate industry, appointed by the Governor;

(5) A representative from the economic development field, appointed by the Governor;

(6) A developer of affordable housing, appointed by the Governor;

(7) A citizen, appointed by the Governor;

(8) A consumer advocate with experience as a fair-housing advocate, housing counselor, or affordable housing advocate, appointed by the Speaker of the House of Representatives;

(9) A housing advocate representing the needs of rural interests, appointed by the Speaker of the House of Representatives;

(10) A special needs housing advocate appointed by the President Pro Tempore of the Senate; and

(11) An advocate for public housing, appointed by the President Pro Tempore of the Senate.

(c)(1) A member of the advisory committee shall serve a term of four (4) years.

(2) In order to stagger the terms of the members, the initial members of the advisory committee shall draw lots as follows:

(A) Two (2) members will have an initial term of one (1) year;

(B) Three (3) members will have an initial term of two (2) years;

(C) Three (3) members will have an initial term of three (3) years; and

(D) Three (3) members will have an initial term of four (4) years.

(3) Members of the advisory committee may serve successive terms.

History. Acts 2009, No. 661, § 1.

15-5-1707. Roles and responsibilities of the Arkansas Housing Trust Fund Advisory Committee.

(a) The Arkansas Housing Trust Fund Advisory Committee will operate within the structure of the Arkansas Development Finance Authority and will advise the Board of Directors of the Arkansas Development Finance Authority on matters relating to the Arkansas Housing Trust Fund and its programs.

(b) The responsibilities of the advisory committee shall be to:

(1) Collaborate with the staff of the authority in drafting rules, compliance responsibilities, set-asides, and funding priorities for the housing trust fund and the programs funded by the housing trust fund, which rules and policies will be referred by the advisory committee to the authority for its review and approval;

(2) Review and advise the authority on housing trust fund marketing efforts;

(3) Review data on the use and impact of the housing trust fund compiled by the staff of the authority, which shall be provided to the advisory committee not less frequently than one (1) time a year;

(4) Prepare, working with the staff of the authority, an annual review of the rules, compliance responsibilities, set-asides, funding priorities, and funding decisions, including any recommended changes, which review shall be presented to the board for final approval; and

(5) Prepare an annual performance report for the housing trust fund, including information about the housing trust fund's success in meeting its intended purposes, which shall be provided to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

History. Acts 2009, No. 661, § 1.

15-5-1708. Purposes and uses of the Arkansas Housing Trust Fund.

(a) Money held in the Arkansas Housing Trust Fund shall be used to provide assistance for eligible activities proposed by eligible applicants, including without limitation grants, loans, loan guarantees, and loan subsidies.

(b) Eligible activities may include without limitation the following:

(1) New construction, reconstruction, or rehabilitation of rental housing or housing designed for owner occupancy;

(2) Rental assistance;

(3) Land acquisition;

- (4) Predevelopment costs;
- (5) Infrastructure;
- (6) Transitional housing;
- (7) Down payment assistance;
- (8) Housing and foreclosure counseling; and
- (9) Technical assistance.

(c) Eligible applicants of assistance from the housing trust fund shall include without limitation:

- (1) Local governments;
- (2) Public housing authorities, public housing agencies, and public housing facilities boards;
- (3) Nonprofit organizations;
- (4) Nonprofit housing developers; and
- (5) For-profit housing developers.

History. Acts 2009, No. 661, § 1.

15-5-1709. Minimum requirements — Distribution of funds — Application evaluation guidelines.

(a) In order for a proposal to be an activity eligible for support, the following minimum requirements must be present:

- (1) Beneficiaries of the activity must have household incomes equal to or less than eighty percent (80%) of the median household income;
- (2) Housing to be funded must meet the same requirements for duration of affordability as set forth in the rules of the Arkansas Development Finance Authority for its HOME Investment Partnership Program;
- (3) Housing to be funded must adhere to the universal design criteria set forth in the rules and regulations of the authority;
- (4) Housing to be funded must meet all building and maintenance standards set forth in the rules of the authority; and
- (5) No more than ten percent (10%) of the project budget may be spent on administrative costs.

(b)(1) Activities to be funded by the Arkansas Housing Trust Fund shall be selected through a competitive process under rules to be promulgated by the authority.

(2) The rules of the authority shall include incentives, set-asides, or inducements for the development of housing, including without limitation for the following:

- (A) Persons with very low income;
- (B) Persons living in rural areas;
- (C) Homeless persons;
- (D) Persons with disabilities;
- (E) Elderly persons; and
- (F) Victims of domestic violence.

(3) The rules of the authority shall also set forth evaluation criteria, which shall include without limitation the following:

(A) The experience of the entity making the proposal, determined through consideration of the proposer's past history in completing activities of a similar scale and nature;

(B) If rental housing is being proposed, an evaluation of the property management history of the developer and management agent;

(C) The timeliness with which units will be developed or the activity implemented;

(D) The number of years a development shall maintain units at affordable rental or sales prices and the strength of enforcement mechanisms to ensure long-term affordability;

(E) The number of affordable units being made available to households with household incomes at or below thirty percent (30%) of area median household income;

(F) The degree to which housing trust fund moneys are used to leverage additional funding and the extent to which housing trust fund moneys will be returned through repayment;

(G) The extent to which the activity will leverage or augment local community affordable housing goals or locally adopted affordable housing plans such as revitalization areas or other geographic areas targeted for investment;

(H) The extent to which the activity will minimize negative impacts on existing tenants and community members, with particular emphasis on displacement;

(I) The extent to which housing produced will be part of a mixed income development or neighborhood;

(J) The extent to which the activity serves households with special needs, including persons who are elderly, disabled, mentally ill, homeless, or victims of domestic violence;

(K) The extent to which the activity adheres to energy efficiency and other environmental and sustainability standards;

(L) The extent to which housing will be located near transit, shopping, community services, and other amenities;

(M) The extent to which financial and home ownership counseling is provided to households served by the activity; and

(N) The amount of the activity budget spent on administrative costs.

History. Acts 2009, No. 661, § 1.

U.S. Code. The HOME Investment Partnership Program, referred to in (a)(2),

was originally enacted by Pub. L. No. 101-625 and is codified at 42 U.S.C. § 12741 et seq.

CHAPTER 6

ARKANSAS RURAL DEVELOPMENT PROGRAM ACT

SECTION.

15-6-101. Title.

15-6-102. Legislative intent.

15-6-103. Definitions.

SECTION.

15-6-104. Arkansas Rural Development Commission.

15-6-105. Department of Rural Services.

SECTION.

15-6-106. Arkansas Rural Development Commission — Department of Rural Services — Functions, powers, and duties.

SECTION.

15-6-107. Assistance programs and grants.

Effective Dates. Acts 1991, No. 302, § 11: Mar. 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that many rural communities lack the expertise to deal with the multitude of various federal and state government programs for rural development and that there is no single uniform set of state government policies directed at addressing the need for rural development and revitalization. Therefore, in order to assist rural communities in understanding the state and federal programs available for rural development and to promote and stimulate a uniform rural development policy for Arkansas, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1352, § 51: Apr. 14, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act affects the method of selection of alternate members of the Legislative Council and Legislative Joint Auditing Committee and that this act is immediately necessary for proper continuity and efficiency in State government. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-6-101. Title.

This chapter may be known and may be cited as the "Arkansas Rural Development Program Act".

History. Acts 1991, No. 302, § 1.

15-6-102. Legislative intent.

(a) The General Assembly finds and declares that:

(1) Federal, state, and local resources and individual effort available to address rural needs are often isolated and limited to individual symptoms of blight and deterioration. Related programs are frequently inaccessible to the residents they are designed to serve. The placement of such programs within the various organizational structures is indistinct and many localities have inadequate numbers of managerial, professional, or technical personnel to pursue such assistance. Additionally, many public and private agencies also lack adequate staffing to adapt programs and services to the special needs and requirements of citizens and their environs. This situation has contributed to a growing confusion and disintegrating force that discourages coordinated individual policy and program development and delivery of services intended to address the needs of rural localities and citizens. Consequently, the energies and resources of the many individual federal, state, and local, public, and private initiatives that could help answer rural needs and capitalize on the strengths of these areas are often frustrated or diminished in their effort;

(2) An important role and challenge for state government, therefore, is to get diverse groups to work together for the betterment of Arkansas and to combine their efforts in imaginative ways to the end that all regions of the state may always offer the highest possible quality of life and cultural and material standards of living without sacrificing individual freedom or responsibility. The General Assembly believes that such individual efforts can be significantly enhanced and can support and sustain each other in the public interest, and many useful and innovative responses to rural needs will be possible if a more focused and coordinated interdisciplinary approach for addressing these problems and opportunities is made available through state government;

(3) The General Assembly seeks to amplify the efforts of existing agencies and individuals who are interested in such rural policy areas as economic development and employment, local government and management, business, agriculture, environment, land use, natural resources, community revitalization, human services and community life, health care, education, transportation, community facilities, and housing; and

(4) Since no state office has been specifically created to promote, harmonize, or assist efforts to address the unique needs, conditions, and strengths of rural areas of the state, it is, therefore, the intent of the General Assembly to create the Arkansas Rural Development Commission and a Department of Rural Services. The commission shall serve as the focal point for generating rural development policy initiatives for the State of Arkansas.

(b) The department shall:

(1) Serve as a single contact point for rural governments, service providers, state and federal agencies, and for individuals interested in rural policies and programs of the state;

(2) Strive to promote cooperative and integrated efforts among such agencies and programs that are designed to address rural needs; and

(3) Recommend to the Governor and to the General Assembly the suitable use of policies, programs, long-range plans, laws, and regulatory mechanisms in order to meet such needs.

History. Acts 1991, No. 302, § 2; 1999, No. 935, § 1.

15-6-103. Definitions.

As used in this chapter:

(1) "Commission" means the Arkansas Rural Development Commission as established by this chapter;

(2) "Department" means the Department of Rural Services established by this chapter;

(3) "Director" means the chief administrative officer of the Department of Rural Services as established by this chapter;

(4) "Federal agency" means any department, office, council, or agency of the federal government or any public benefit corporation or authority authorized by federal statute;

(5) "Governing body" means:

(A) The city council or board of directors for a city of the first class or a city of the second class;

(B) The town council for an incorporated town; or

(C) The quorum court for a county;

(6) "Local governmental units" or "local agency" means a city of the first class or a city of the second class, an incorporated town, or a county or an office or department thereof;

(7) "Municipality" means any city of the first class, city of the second class, or incorporated town established under the laws of the State of Arkansas;

(8) "Political subdivision" means a county, municipality, and any other unit of local government, including a school district and an improvement district, authorized by law to perform governmental functions;

(9) "Rural area" or "rural community" means all the territory of the State of Arkansas that is not within the outer boundary of any city or town having a population of twenty thousand (20,000) or more according to the latest federal decennial census or within the city's or town's neighboring urbanized areas;

(10) "Rural development and revitalization" means those policies, programs, laws, regulations, or other matters having to do with rural areas, including, but not limited to, economic development, employment, local government services and management, business, agriculture, environment, land use and natural resources, human services and

community life, health care, education, transportation, community facilities, and housing;

(11) "State" means the State of Arkansas;

(12) "State agency" means any department, board, commission, office, or agency of the State of Arkansas; and

(13) "Urbanized area" means the areas of dense settlement and suburbanization contiguous to the central city of a metropolitan area.

History. Acts 1991, No. 302, § 3; 1999, No. 935, § 2.

15-6-104. Arkansas Rural Development Commission.

(a) There is established the Arkansas Rural Development Commission, which shall consist of eleven (11) members from rural areas.

(b) The members shall be appointed as follows:

(1)(A)(i) There shall be seven (7) members of the commission appointed by the Governor to serve for terms of five (5) years;

(ii) One (1) member shall be appointed from each of the four (4) congressional districts of the state as constituted January 1, 1990, and shall be a resident of a rural area of that congressional district; and

(iii) Three (3) members shall be appointed from the state at large and shall be residents of a rural area.

(B) In the event of a vacancy on the commission in one (1) of the Governor's appointee positions due to death, resignation, or other reason, the vacancy shall be filled for the unexpired portion of the term by appointment by the Governor of a person meeting the same qualifications required for initial appointment.

(C)(i) Except as provided in subdivisions (b)(1)(C)(ii)-(iv) of this section, members of the commission shall not be eligible for reappointment.

(ii) A member appointed to fill the unexpired portion of a term may be reappointed to serve a five-year term.

(iii) A member appointed to a five-year term by the Governor shall not be eligible for reappointment by the Governor but may be appointed by the President Pro Tempore of the Senate or the Speaker of the House of Representatives.

(iv) The Governor may appoint to a five-year term a person previously appointed to the commission by the President Pro Tempore of the Senate or the Speaker of the House of Representatives; and

(2) Two (2) members shall be appointed by and shall serve at the pleasure of the President Pro Tempore of the Senate, and two (2) members shall be appointed by and shall serve at the pleasure of the Speaker of the House of Representatives.

(c) The commission shall select by majority vote one (1) of its members to serve as chair and one (1) to serve as vice chair.

(d) Members of the commission shall serve without compensation, provided that, in the event funds shall be appropriated for such

purposes, the members may receive expense reimbursement in accordance with § 25-16-902.

History. Acts 1991, No. 302, § 4; 1993, No. 448, § 1; 1997, No. 250, § 99; 1997, No. 1354, § 32; 2001, No. 1288, § 8; 2009, No. 541, § 1.

A.C.R.C. Notes. As enacted, former subdivision (b)(1)(D) began: "Except for the initial terms of less than five years in length."

Acts 1991, No. 302, § 4, also provided: "The initial length of terms for the nonlegislative members of the Commission shall be of graduated lengths from one (1) year to five (5) years with two (2) members serving a one (1) year term, one (1) mem-

ber serving two (2) year term, two (2) members serving three (3) year terms, one (1) member serving a four (4) year term, and two (2) members serving five (5) year terms. The length of the initial nonlegislative members' terms shall be determined by lot at the first meeting of the Commission."

Amendments. The 2009 amendment, in (b)(1), inserted "Except as provided in subdivisions (b)(1)(C)(ii) through (iv) of this section" in (b)(1)(C)(i), inserted (b)(1)(C)(ii) through (iv), and made related changes.

15-6-105. Department of Rural Services.

(a) There is created the Department of Rural Services.

(b) The head of the department shall be the Director of the Department of Rural Services, who shall be appointed by the Governor and shall serve at his or her pleasure, subject to confirmation by the Arkansas Rural Development Commission.

(c) The director shall employ necessary staff to carry out the duties and functions of the department as otherwise provided in this chapter or as otherwise provided by law.

(d) The Governor shall direct that all state agencies provide the director with assistance in advancing the purpose of the department to assure that the activities of the department are fully coordinated with the activities of state agencies providing related services.

History. Acts 1991, No. 302, § 5; 1999, No. 935, § 3.

15-6-106. Arkansas Rural Development Commission — Department of Rural Services — Functions, powers, and duties.

(a) The Arkansas Rural Development Commission, by and through the Department of Rural Services, the Director of the Department of Rural Services, and his or her duly authorized officers and employees, shall have the following functions, powers, and duties:

(1) To serve as a clearinghouse and provide comprehensive information relating to rural development and revitalization upon request to any agency, individual, or corporation;

(2) To advise and assist agencies, individuals, and corporations in answering particular rural revitalization and development needs, including cooperative efforts among such agencies, individuals, and corporations to solve common problems or provide services in these areas;

(3)(A) To receive notification from all state and federal agencies, individuals, or corporations engaged in rural development and revitalization of program descriptions, appropriation data, and application procedures.

(B) The department shall maintain a listing of existing programs and advise local agencies, individuals, or corporations of their existence;

(4) To assist, upon request, applicant local agencies, individuals, or corporations located in rural areas in obtaining timely and efficient responses from state and federal agencies, to assist such applicants in consideration of alternative program grant strategies, to assist state and federal agencies in cooperative approaches to address the needs of such applicants, and to provide technical assistance to agencies in formulating and implementing rural development and revitalization programs;

(5) To assist the Governor and the General Assembly in the integration and formulation of state rural development and revitalization policy and long-range plans for rural areas and in answering needs related thereto;

(6) To analyze and make recommendations concerning proposed new state legislation or programs that may affect rural areas;

(7) To apply for and receive grants or financial assistance from the federal government or other agencies, individuals, or corporations;

(8) To assist the Governor in coordinating the activities and services of those departments and agencies of the state having relationships with local rural agencies, individuals, and corporations in order to provide more effective service to them and to simplify state procedures relating thereto;

(9) To keep the Governor informed about the problems and needs of agencies, individuals, and corporations that are involved with rural development and revitalization and to assist in formulating policies with respect thereto and utilizing the resources of state government for the benefit of rural areas; and

(10) To promote and encourage the establishment of a nonprofit foundation, a Center for Rural Arkansas, and to cooperate and coordinate with and assist the center in accessing state and federal government and private nonprofit and corporate foundation grant funds to aid in rural development and revitalization for rural Arkansas.

(b) The commission shall have the power to prescribe and issue, pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., such reasonable rules and regulations as may be necessary to carry out the provisions of this chapter.

(c) The commission shall prepare and submit biennially on January 1 a comprehensive report concerning the assistance activities undertaken by the department under the direction of the commission, any recommendations for legislative proposals, data concerning program activities in rural areas, and other pertinent information which, in the opinion of the commission, will indicate the activities conducted by the department and the commission in the previous biennium.

History. Acts 1991, No. 302, §§ 4, 6; 1993, No. 448, § 2; 1999, No. 935, § 4.

A.C.R.C. Notes. As enacted, this section contained the language: “beginning

on or before January 1, 1993 and on January first of each second year thereafter” following “submit biennially” in subsection (c).

15-6-107. Assistance programs and grants.

(a) The Department of Rural Services shall request such specific information as the Arkansas Rural Development Commission and the Director of the Department of Rural Services determine to be necessary concerning assistance programs and grants administered by federal, state, and local agencies, individuals, and corporations designed to enhance rural areas. The information shall be used to advise local agencies, individuals, or corporations for the purpose of promoting coordination in program or grant efforts wherever feasible or proper.

(b) Any political subdivision requesting program grants or assistance in order to address rural development and revitalization needs, conditions, or strengths in rural areas, pursuant to the rules of the commission, may confer with the department to obtain assistance in gaining the most prompt and efficient processing and review of any grant applications.

(c) The department, so far as possible, shall render such assistance, and the commission may designate an officer or employee of the department to act as an expeditor for the purpose of:

(1) Facilitating contacts for the applicant with state, federal, or local agencies, individuals, or corporations responsible for processing and reviewing grant applications;

(2) Arranging conferences to clarify the interest and requirements of any such agency, individual, or corporation with respect to grant applications;

(3) Considering with the agency, individual, or corporation the feasibility of consolidating hearings and data required of the applicant;

(4) Assisting the applicant in the resolution of outstanding issues identified by the agency, individual, or corporation, including delays experienced in application review; and

(5) Coordinating federal, state, and local grant application review actions and assistance programs to the extent practicable.

History. Acts 1991, No. 302, § 7; 1999, No. 935, § 5.

A.C.R.C. Notes. Acts 2007, No. 573, § 4, provided: “The Department of Rural Services shall develop the necessary rules and regulations for the disbursement of matching fund grants to county fairs for the construction, renovation and/or improvements to county fair grounds. The grants shall be matched on a 50/50 basis. The match may be cash or in-kind. No county fair shall receive more than \$30,000 for the biennium.

“The provisions of this section shall be

in effect only from July 1, 2007 through June 30, 2009.”

Acts 2007, No. 573, § 5, provided: “The Department of Rural Services shall promulgate regulations establishing the criteria to be utilized in determining to whom grants will be made under this Act. Subject to the approval of the Governor, and approval by the Arkansas Legislative Council or the Joint Budget Committee, the Department of Rural Services shall distribute the grants.

“Determining the maximum number of employees and the maximum amount of

appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Department of Rural Services may operate more efficiently if some flexibility is provided to the Department of Rural Services authorizing broad powers under this Section. Therefore, it is both

necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“The provisions of this section shall be in effect only from July 1, 2007 through June 30, 2009.”

CHAPTERS 7-8

[Reserved]

CHAPTER 9

COMMISSION ON INFORMATION AGE COMMUNITIES ACT

SECTION.	SECTION.
15-9-101. Title.	Age Communities established.
15-9-102. Definition.	
15-9-103. Legislative findings and intent.	15-9-105. Powers and duties.
15-9-104. Commission on Information	

Effective Dates. Acts 1999, No. 712, § 9: July 1, 1999. Emergency clause provided: “It is found and determined by the General Assembly that the economic and societal changes that have occurred in the last half of the twentieth century have been driven primarily by major advances in the fields of science and technology; that these advances have caused unanticipated and dramatic shifts in the educational and skill requirements for the na-

tion’s workforce and wide disparities in the availability of economic opportunities within and between states; and therefore this act is necessary because of the rapid change in technology and resulting economic opportunities. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999.”

15-9-101. Title.

This chapter may be cited as and shall be known as the “Commission on Information Age Communities Act”.

History. Acts 1999, No. 712, § 1.

15-9-102. Definition.

As used in this chapter, the term “communities” means lawfully incorporated municipalities, unincorporated areas, counties, or any combination thereof.

History. Acts 1999, No. 712, § 2.

15-9-103. Legislative findings and intent.

(a) The General Assembly finds and declares that the economic well-being of Arkansas and its communities depends upon the belief of its citizens that their state and their community are places where:

- (1) Families can live in safety and security;
- (2) Quality health care is readily available;
- (3) The educational system meets the needs of learners of all ages;
- (4) Government services are provided in an efficient and effective manner;

(5) Opportunities for business and commercial growth are encouraged and supported; and

(6) The state’s natural heritage and quality of life are protected and enjoyed.

(b) The General Assembly further finds and determines that the economic and societal changes that have occurred in the last half of the twentieth century have been driven primarily by major advances in the fields of science and technology. These advances have caused unanticipated and dramatic shifts in the educational and skill requirements for the nation’s workforce and wide disparities in the availability of economic opportunities within and between states.

(c) It is the intent of the General Assembly to provide the communities of this state with a mechanism to meet the economic and societal challenges that have and will continue to arise as new technologies are developed and marketed.

(d) It is also the intent of the General Assembly that this mechanism will prepare Arkansas communities and government agencies to deal with economic and societal challenges by encouraging:

(1) A vision for the twenty-first century in which Arkansas will have an information-ready citizenry and state leaders will be knowledgeable about information-age budget policy;

(2) Collaborative partnering, the essential behavior of the twenty-first century economy;

(3) Organizational and budgeting collaboration for connectivity investments and investments in people networks;

(4) Links between community needs and statewide network applications;

(5) Economic development expansion strategies that are based on information connectivity; and

(6) Integration of existing state resources as the embodiment of planned, long-term change.

History. Acts 1999, No. 712, § 3.

15-9-104. Commission on Information Age Communities established.

(a) There is created the Commission on Information Age Communities, which shall consist of nine (9) voting members:

- (1) The President of the Arkansas Science and Technology Authority;
- (2) The Director of the Arkansas Economic Development Commission;
- (3) The Director of the Department of Finance and Administration;
- (4) The Director of the Department of Information Systems;
- (5) The Director of the Department of Education;
- (6) The Director of the Department of Higher Education; and
- (7)(A) Three (3) members appointed by the Governor from a list of names submitted by the membership of the commission who are knowledgeable in various aspects of information technology and community development.

(B) The members appointed by the Governor shall serve staggered three-year terms.

(b) The commission shall annually elect one (1) member from the commission as Chair of the Commission on Information Age Communities. The commission may also elect a Vice Chair of the Commission on Information Age Communities and a Secretary of the Commission on Information Age Communities.

(c)(1) Five (5) members of the commission shall constitute a quorum, and the affirmative vote of five (5) members shall be necessary for any action taken by the commission.

(2) No vacancy in the membership of the commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the commission.

(d) Members of the commission shall serve without compensation.

(e) The commission shall meet at least semiannually.

(f) The commission will report at least annually to the Governor and the Joint Committee on Advanced Communications and Information Technology regarding the status of its work.

(g)(1) In carrying out its functions, the commission may create such advisory committees as it may deem necessary.

(2) The memberships of these advisory committees may include both members and staff of the commission and other persons drawn from sources other than the commission, all of whom shall serve at the pleasure of the commission.

(3) Members of such advisory committees shall serve without compensation for their membership on the committees.

History. Acts 1999, No. 712, § 4.

A.C.R.C. Notes. As enacted by Acts 1999, No. 712, § 4, this section contained additional language which read as follows: "The initial members shall be

appointed so that one (1) member is appointed for a term of three (3) years, one (1) member is appointed for a term of two (2) years, and one (1) member is appointed for a term of one (1) year. The Governor

shall select the initial chairperson from the commission membership."

15-9-105. Powers and duties.

(a) The Commission on Information Age Communities shall be a body corporate and politic, having the powers and jurisdiction provided in this chapter and any additional powers as conferred upon it by the General Assembly or by the people of this state.

(b) The commission is authorized and designated to engage in cooperative programs and activities involving the establishment and encouragement of community-based technologies, systems, networks, and services that are designed to enhance the quality of life, educational opportunity, and economic well-being for residents of that community.

(c) The commission shall have all the powers necessary to carry out its purposes, which shall include, but not be limited to, the following:

(1) To make, amend, and repeal bylaws, rules, and regulations for the management of its affairs;

(2) To make contracts and execute all instruments necessary or convenient for carrying out its business;

(3) To enter into agreements or other transactions with any federal, state, county, or municipal agency and with any individual, corporation, firm, association, or any other entity involving technology, products, and services;

(4) To appoint officers, employees, consultants, agents, and advisors and prescribe their duties;

(5) To appear on its own behalf before boards, commissions, departments, or other agencies of municipal, county, state, or federal government;

(6)(A) To accept any and all donations, grants, bequests, and devises, conditional or otherwise, of money, property, services, or other things of value which may be received from the federal government or any agency thereof, any governmental agency, or any institution, person, firm, or corporation, public or private, to be held, used, or applied for any or all of the purposes specified in this chapter, in accordance with the terms and conditions of any such grant.

(B) Receipt of each donation or grant shall be detailed annually in the report of the commission and shall include the identity of the donor or lender, the nature of the transaction, and any conditions attached thereto;

(7) To organize, conduct, sponsor, or cooperate in and assist in the conduct of special institutes, conferences, demonstrations, and studies relating to the stimulation and formulation of community-based technologies, systems, networks, and services that are designed to enhance the quality of life, educational opportunity, and economic well-being for residents of that community; and

(8) To exercise any other powers necessary for the operation and functioning of the commission within the purposes authorized in this chapter.

History. Acts 1999, No. 712, § 5.

CHAPTER 10
ENERGY CONSERVATION AND DEVELOPMENT

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. ARKANSAS ENERGY REORGANIZATION AND POLICY ACT OF 1981.
- 3. NUCLEAR POWER GENERALLY.
- 4. SOUTHERN STATES ENERGY COMPACT.
- 5. ALTERNATIVE FUELS. [REPEALED.]
- 6. ALTERNATIVE FUELS COMMISSION. [REPEALED.]
- 7. ALTERNATIVE FUELS FUND AND ARKANSAS WEATHERIZATION ASSISTANCE FUND. [REPEALED.]
- 8. ARKANSAS ALTERNATIVE ENERGY COMMISSION.

Effective Dates. Acts 1993, No. 750, § 10; Mar. 26, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that in order to take the steps necessary to permit the state to participate in a federal government energy efficient mortgage pilot program established by the Energy Policy Act of 1992 (P.L.

102-486), a program which will make housing in Arkansas more energy efficient and affordable, it is necessary that this act take effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

SUBCHAPTER 1 — GENERAL PROVISIONS
[Reserved]

SUBCHAPTER 2 — ARKANSAS ENERGY REORGANIZATION AND POLICY ACT OF 1981

SECTION.

- 15-10-201. Title.
- 15-10-202. Declaration of policy.
- 15-10-203. Arkansas Energy Office — Creation.
- 15-10-204. Arkansas Energy Office — Director.

SECTION.

- 15-10-205. Arkansas Energy Office — Powers and duties.
- 15-10-206. Agency cooperation and coordination with Arkansas Energy Office.

Publisher's Notes. The Energy Conservation and Policy Office and the Energy Council, established by Acts 1977, No. 103, §§ 1-11, were abolished by Acts 1979, No. 255, § 4, and their powers and duties transferred by a type 3 transfer to the Arkansas Department of Energy, established by Acts 1979, No. 255, § 4. Acts 1981, No. 7, § 4, rendered Acts 1979, No.

255, § 4, obsolete by repealing Acts 1971, No. 38, § 25, as added by Acts 1979, No. 255, § 4.

Cross References. Arkansas Economic Development Council, § 15-4-201 et seq.

Energy Conservation and Renewable Energy Resource Finance Act, § 14-167-201 et seq.

Energy Conservation Endorsement Act of 1977, § 23-3-401 et seq.

Effective Dates. Acts 1981, No. 7, § 6: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present State Energy Department should become a division of the Arkansas Industrial Development Commission and that such transi-

tion should occur on July 1, 1981 and that unless this emergency clause is enacted, this Act will not go into effect until after such date. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

15-10-201. Title.

This subchapter may be cited as the "Arkansas Energy Reorganization and Policy Act of 1981".

History. Acts 1981, No. 7, § 1; A.S.A. 1947, § 5-936.

15-10-202. Declaration of policy.

The General Assembly finds and declares that:

(1) The adequacy of future energy supplies will be crucial to the state's economic development;

(2) In order to create a favorable environment for economic development and in order to preserve and enhance our present quality of life, Arkansas must promote the efficient use of energy and the development of a reliable and economic energy delivery system which includes the use of renewable energy resources as well as conventional sources of energy such as coal, lignite, uranium, oil, and natural gas;

(3) The need exists for comprehensive state leadership to ensure the wise and efficient production, distribution, use, and conservation of energy;

(4) Only an agency with comprehensive duties and powers can collect, analyze, and disseminate information necessary to promote a reliable and efficient energy delivery system for the state;

(5) It is in the best interest of the citizens of this state to establish a division within the Arkansas Economic Development Commission to coordinate the planning and execution of comprehensive energy conservation programs; and

(6) The development and use of a diverse array of energy resources must be encouraged.

History. Acts 1981, No. 7, § 2; A.S.A. 1947, § 5-937; Acts 1997, No. 540, § 34.

15-10-203. Arkansas Energy Office — Creation.

(a)(1) There is created an Arkansas Energy Office, also referred to in this subchapter as the "office", as a division within the Arkansas Economic Development Commission.

(2)(A) The executive head of this division shall be the Director of the Arkansas Energy Office.

(B) The Director of the Arkansas Energy Office shall be appointed by the Director of the Arkansas Economic Development Commission with the advice and consent of the Governor.

(b) The Arkansas Energy Office shall consist of such divisions as may be established by the Director of the Arkansas Energy Office, with the approval of the Director of the Arkansas Economic Development Commission.

History. Acts 1981, No. 7, § 3; A.S.A. 1947, § 5-938; Acts 1997, No. 540, § 35.

15-10-204. Arkansas Energy Office — Director.

(a) Each division of the Arkansas Energy Office shall be under the direct control and supervision of the Director of the Arkansas Energy Office.

(b) The Director of the Arkansas Energy Office may delegate his or her functions, powers, and duties to various divisions of the office as he or she may deem desirable and necessary for the effective and efficient operation of the agency.

(c) In addition to other duties and functions prescribed for the Director of the Arkansas Energy Office elsewhere in this subchapter, the Director of the Arkansas Energy Office shall supervise the daily operation of the agency and advise the Director of the Arkansas Economic Development Commission, the Governor, and the General Assembly on energy matters.

History. Acts 1981, No. 7, § 3; A.S.A. 1947, § 5-938; Acts 1997, No. 540, § 36.

15-10-205. Arkansas Energy Office — Powers and duties.

(a) The Arkansas Energy Office shall coordinate authority and planning by the state in energy-related matters and shall have the following duties and responsibilities:

(1) Coordinating energy matters between and among all state agencies;

(2) Compiling an energy profile for the state which includes, but is not limited to, data on the demand for and supply of renewable and nonrenewable energy resources;

(3) Collecting data on, planning, and administering emergency plans, when needed, to allocate the distribution of motor fuels, aviation fuels, heating oil, and propane by wholesale jobbers and dealers within the state;

(4) Collecting data on, planning, and administering emergency plans, when needed, for the conservation or rationing of motor fuels;

(5) Proposing executive and legislative measures on energy-related matters;

(6) Providing comments before state and federal regulatory bodies on energy matters mandated by federal and state agencies;

(7) Monitoring and evaluating existing and proposed actions, laws, policies, regulations, and orders of the state and federal governments in energy matters relevant to Arkansas;

(8) Securing and administering federal energy grants for agencies of state government and monitoring and publicizing federal energy grants available to the private sector;

(9) Carrying out energy-related administrative and program functions established and required by federal law, regulations, or guidelines when applicable in Arkansas;

(10) Developing and administering conservation programs directed toward reducing wasteful, inefficient uses of energy;

(11) Promulgating reasonable rules and regulations for the purpose of implementing and prescribing enforcement for thermal and lighting efficiency standards for new building construction in the state;

(12) Developing and proposing thermal and lighting efficiency improvement programs for all buildings owned by the state and prescribing reasonable thermal and lighting efficiency criteria applicable to the leasing of buildings by all state agencies; and

(13) Administering a public energy awareness program to inform and demonstrate to the public the importance and methods of utilizing energy conservation and renewable energy resources.

(b) The office shall have the authority to:

(1) Provide comments before state and federal bodies in energy matters relevant to Arkansas;

(2) Receive and expend funds obtained from the federal government or other sources by means of contracts, grants, awards, payment for services, and other devices in support of energy-related programs, studies, or other operations beneficial to the State of Arkansas;

(3) Promulgate reasonable rules and regulations for the purpose of:

(A) Implementing and prescribing enforcement for thermal and lighting efficiency standards for new building construction; and

(B) Requiring a city or county that issues building permits for new building construction to adopt the 2004 Arkansas Energy Code for New Building Construction, as it existed on January 1, 2009;

(4) Propose programs for the implementation of thermal and lighting efficiency improvements for all buildings owned by the state and prescribe reasonable thermal and lighting efficiency criteria applicable to the leasing of buildings by all state agencies; and

(5) Promulgate rules and regulations for the purpose of administering emergency plans as referred to in subdivision (a)(4) of this section.

(c) Prior to the final adoption of the rules and regulations prescribing thermal and lighting efficiency standards for new building construction referred to in subdivision (b)(3) of this section, the Joint Committee on Energy of the General Assembly shall review and comment on the rules and regulations of the office.

History. Acts 1981, No. 7, § 3; A.S.A. 1947, § 5-938; Acts 1993, No. 234, § 1; 1993, No. 248, § 1; 2009, No. 1196, §§ 1, 2. inserted “aviation fuels” in (a)(3); inserted (b)(3)(B) and redesignated the existing text of (b)(3) accordingly; and made related changes.

Amendments. The 2009 amendment

15-10-206. Agency cooperation and coordination with Arkansas Energy Office.

All other state agencies shall cooperate and coordinate with the Arkansas Energy Office to the utmost degree within the range of action permissible within statutory authority.

History. Acts 1981, No. 7, § 3; A.S.A. 1947, § 5-938.

SUBCHAPTER 3 — NUCLEAR POWER GENERALLY

SECTION.	SECTION.
15-10-301. Declaration of policy.	15-10-305. Coordinator of Atomic Development Activities.
15-10-302. Definitions.	15-10-306. Injunction.
15-10-303. License or permit requirement.	
15-10-304. Studying the need for changes in law.	

Cross References. Low-level radioactive waste, § 8-8-201 et seq.

Nuclear planning and response program, § 20-21-401 et seq.

RESEARCH REFERENCES

Am. Jur. 6 Am. Jur. 2d, Atomic E., § 45.

15-10-301. Declaration of policy.

- (a) The State of Arkansas endorses the action of Congress in enacting the Atomic Energy Act of 1954 to institute a program to encourage the widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public and therefore declares the policy of the state to be:
- (1) To cooperate actively in the program thus instituted; and
 - (2) To the extent that the regulation of special nuclear materials and by-product materials, of production facilities and utilization facilities, and of persons operating such facilities may be within the jurisdiction of the state, to provide for the exercise of the state’s regulatory authority so as to conform, as nearly as may be, to the Atomic Energy Act of 1954 and regulations issued thereunder, to the end that there

may be, in effect, a single harmonious system of regulation within the state.

(b) The State of Arkansas recognizes that the development of industries producing or utilizing atomic energy may result in new conditions calling for changes in the laws of the state and in regulations issued thereunder with respect to health and safety; working conditions; workers' compensation; transportation; public utilities; life, health, accident, fire, and casualty insurance; the conservation of natural resources, including wildlife; and the protection of streams, rivers, and airspace from pollution, and therefore declares the policy of the state to be to:

(1) Adapt its laws and regulations to meet the new conditions in ways that will encourage the healthy development of industries or utilizing atomic energy while at the same time protecting the public interest;

(2) Initiate continuing studies of the need for changes in the relevant laws and regulations of the state by the respective departments and agencies of the state which are responsible for their administration; and

(3) Assure the coordination of the studies thus undertaken, particularly with other atomic industrial development activities of the state and with the development and regulatory activities of other states and of the United States Government.

History. Acts 1957, No. 386, § 1; A.S.A. 1947, § 82-1401.

1954, referred to in this section, is codified as 42 U.S.C. § 2011 et seq.

U.S. Code. The Atomic Energy Act of

15-10-302. Definitions.

As used in this subchapter:

(1) "Atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation;

(2) "By-product material" means any radioactive materials, except special nuclear materials, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing nuclear materials;

(3) "Operator" means any individual who manipulates the controls of a utilization or production facility;

(4) "Production facility" means:

(A) Any equipment or device capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security or in such manner as to affect the health and safety of the public; or

(B) Any important component part especially designed for such equipment or device;

(5) "Special nuclear material" means:

(A) Plutonium and uranium enriched in the isotope 233 or in the isotope 235 or any other material after the United States Nuclear Regulatory Commission has determined the material to be such; or

(B) Any material artificially enriched by any of the foregoing; and
(6) "Utilization facility" means any:

(A) Equipment or device, except an atomic weapon, capable of making use of special nuclear materials in such quantity as to be of significance to the common defense and security or in such manner as to affect the health and safety of the public or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security or in such manner as to affect the health and safety of the public; or

(B) Important component part especially designed for such equipment or device.

History. Acts 1957, No. 386, § 6; A.S.A. 1947, § 82-1406.

15-10-303. License or permit requirement.

No person shall manufacture, construct, produce, transfer, acquire, or possess any special nuclear material, by-product material, production facility, or utilization facility wholly within this state unless he or she shall have first obtained a license or permit for the activity in which he or she proposes to engage from the United States Nuclear Regulatory Commission if, pursuant to the Atomic Energy Act of 1954, the commission requires a license or permit to be obtained by persons proposing to engage in activities of the same type over which it has jurisdiction.

History. Acts 1957, No. 386, § 2; A.S.A. 1947, § 82-1402. 1954, referred to in this section, is codified as 42 U.S.C. § 2011 et seq.

U.S. Code. The Atomic Energy Act of

15-10-304. Studying the need for changes in law.

(a) Each of the following departments and agencies of state government is directed to initiate and to pursue continuing studies as to the need, if any, for changes in the laws and regulations administered by it that would arise from the presence within the state of special nuclear materials and by-product materials and from the operation herein of production or utilization facilities.

(b) On the basis of such studies, each of these departments and agencies is to make recommendations for the enactment of laws or amendments to laws administered by it and proposals for amendments to the regulations issued by it, as may appear necessary and appropriate:

(1) The State Board of Health, particularly as to hazards, if any, to the public health and safety;

(2) The Department of Labor, particularly as to hazardous working conditions, if any;

(3) The Workers' Compensation Commission, particularly as to the time and character of proof of claims of injuries and the extent of the compensation allowable therefor;

(4) The Arkansas State Highway and Transportation Department, particularly as to the transportation of special nuclear materials and by-product materials on highways of the state;

(5) The Arkansas Public Service Commission, particularly as to the transportation of special nuclear materials and by-product materials by common carriers not in interstate commerce and as to the participation by public utilities subject to its jurisdiction in projects looking to the development of production or utilization facilities for industrial or commercial use;

(6) The State Insurance Department, particularly as to the insurance of persons and property from hazards to life and property resulting from atomic development;

(7) The Arkansas Geological Commission, particularly as to the hazards, if any, to the natural resources of the state, including wildlife, and as to the protection, if necessary, of rivers, streams, and airspace from pollution; and

(8) Such other departments and agencies, including departments and agencies of political subdivisions of the state, as the Governor may direct and for the purposes specified by him or her.

History. Acts 1957, No. 386, § 3; A.S.A. 1947, § 82-1403.

15-10-305. Coordinator of Atomic Development Activities.

(a)(1) The Governor may appoint a citizen of this state as the Coordinator of Atomic Development Activities.

(2) The person appointed shall serve as:

(A) Advisor to the Governor with respect to atomic industrial development within the state;

(B) Coordinator of the development and regulatory activities of the state relating to the industrial and commercial uses of atomic energy; and

(C) Deputy of the Governor in matters relating to atomic energy, including cooperation with other states and with the United States Government.

(b)(1) The coordinator shall have the duty of coordinating the studies, recommendations, and proposals of the several departments and agencies of the state and its political subdivisions required by § 15-10-304 with each other and also with the programs and activities of the Arkansas Economic Development Council.

(2) So far as may be practicable, he or she shall coordinate the studies conducted and the recommendations and proposals made in this state with like activities in other states and with the policies and regulations of the United States Nuclear Regulatory Commission.

(3) In carrying out his or her duties, he or she shall proceed in close cooperation with the Arkansas Economic Development Council.

(c)(1) The several departments and agencies of the state and its political subdivisions which are directed by § 15-10-304 to initiate and pursue continuing studies are further directed to keep the coordinator fully and currently informed as to their activities relating to atomic energy.

(2) No regulation or amendment to a regulation applying specifically to an atomic energy matter which any such department or agency may propose to issue shall become effective until thirty (30) days after it has been submitted to the coordinator unless, upon a finding of emergency need, the Governor by order waives all or any part of this thirty-day period.

(d) The coordinator shall keep the Governor and the several interested departments and agencies informed as to private and public activities affecting atomic industrial development and shall enlist their cooperation in taking action to further such development as is consistent with the health, safety, and general welfare of this state.

History. Acts 1957, No. 386, § 4; A.S.A. 1947, § 82-1404; Acts 1997, No. 540, § 37.

15-10-306. Injunction.

Whenever, in the opinion of the Attorney General, any person is violating or is about to violate § 15-10-303, the Attorney General may apply to the appropriate court for an order enjoining the person from engaging or continuing to engage in the activity violative of this subchapter. Upon a showing that the person has engaged or is about to engage in any such activity, a permanent or temporary injunction, restraining order, or other order may be granted.

History. Acts 1957, No. 386, § 5; A.S.A. 1947, § 82-1405.

SUBCHAPTER 4 — SOUTHERN STATES ENERGY COMPACT

SECTION.

- 15-10-401. Enactment of compact into law.
- 15-10-402. Arkansas board members.
- 15-10-403. Supplementary agreements — Appropriations.

SECTION.

- 15-10-404. Officers, departments, agencies, and institutions authorized to cooperate with board.

A.C.R.C. Notes. Acts 1979, No. 1112, § 4, provided: “The provisions of this Act shall become effective at such time as nine (9) of the party states to the Southern Interstate Nuclear Compact approve substantially the same changes in the Com-

pact as are provided for in this Act and the Congress of the United States consents to the Compact, substantially as amended by this Act.”
Effective Dates. Acts 1979, No. 1112, §§ 4, 6: effective on approval of changes

by nine states party to compact and consent by U.S. Congress. Emergency clause provided: "It is hereby found and determined by the General Assembly that energy in its various forms is essential to the economic and industrial growth and expansion of the State of Arkansas and of the Southern Region, and is vital to the health, safety, and welfare of the people of this State and Region; that according to available studies and statistical data, the Nation and the World are facing a severe energy shortage, and it is essential that states and U.S. territories of this Region make plans for the orderly and systematic development and use of the energy resources that are available; that the Southern Interstate Nuclear Compact has taken steps to reorganize its role and purpose to

include the overall aspects of energy; and, it is further determined by the General Assembly that restructuring the Southern Interstate Nuclear Compact into a Southern States Energy Compact with broadened powers to coordinate the research and planning activities of the states and territories in this Region into an overall effort, to develop, conserve, and use energy available to the Region, offers the most efficient and economic means of accelerating this Region's energy efforts. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval." Approved April 26, 1979.

RESEARCH REFERENCES

Am. Jur. 6 Am. Jur. 2d, Atomic E.,
§ 46.

15-10-401. Enactment of compact into law.

The Southern States Energy Compact is hereby enacted into law and entered into by this State with any and all states legally joining therein in accordance with its terms, in the form substantially as follows:

SOUTHERN STATES ENERGY COMPACT

ARTICLE I

Policy and Purpose

The party states recognize that the proper employment and conservation of energy and employment of energy-related facilities materials, and products within the context of a responsible regard for the environment can assist substantially in the industrialization of the South and the development of a balanced economy for the region. They also recognize that optimum benefit from and acquisition of energy resources and facilities requires systematic encouragement, guidance, and assistance from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis; it is the purpose of this compact to provide the instruments and framework for such a cooperative effort to improve the economy of the South and contribute to the individual and community well-being of the region's people.

ARTICLE II

The Board

(a) There is hereby created an agency of the party states to be known as the "Southern States Energy Board," hereinafter called the Board. The Board shall be composed of three (3) members from each party state, one (1) of whom shall be appointed or designated in each state to represent the Governor, the State Senate, and the State House of Representatives, respectively. Each member shall be designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the Board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any lesser period of time) by a deputy or assistant, if the laws of this state make specific provision therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) Each party state shall be entitled to one (1) vote on the Board, to be determined by majority vote of each member or member's representative from the party state present and voting on any question. No action of the Board shall be binding unless taken at a meeting at which a majority of all party states are represented and unless a majority of the total number of votes on the Board are cast in favor thereof.

(c) The Board shall have a seal.

(d) The Board shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The Board shall appoint an Executive Director who shall serve at its pleasure and who shall also act as Secretary, and who, together with the Treasurer, shall be bonded in such amounts as the Board may require.

(e) The Executive Director, with the approval of the Board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The Board may establish and maintain, independently or in conjunction with any one (1) or more of the party states, a suitable retirement system for its full-time employees. Employees of the Board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the Board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The Board may establish and maintain or participate in such additional program of employee benefits as may be appropriate.

(g) The Board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The Board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment,

supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize and dispose of the same.

(i) The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

(j) The Board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The Board shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The Board annually shall make to the governor of each party state, a report covering the activities of the Board for the preceding year, and embodying such Recommendations as may have been adopted by the Board, which report shall be transmitted to the legislature of said state. The Board may issue such additional reports as it may deem desirable.

ARTICLE III

Finances

(a) The Board shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One-half ($\frac{1}{2}$) of the total amount of each budget of estimated expenditures shall be apportioned among the party states in equal shares; one-quarter ($\frac{1}{4}$) of each such budget shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the last decennial federal census; and one-quarter ($\frac{1}{4}$) of each budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the Board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the Board.

(c) The Board may meet any of its obligations in whole or in part with funds available to it under Article II(h) of this compact, provided that the Board takes specific action setting aside such funds prior to the incurring of any obligations to be met in whole or in part in this manner.

Except where the Board makes use of funds available to it under Article II(h) hereof, the Board shall not incur any obligations prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(d) The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Board.

(e) The accounts of the Board shall be open at any reasonable time for inspection.

ARTICLE IV

Advisory Committees

The Board may establish such advisory and technical committees as it may deem necessary, membership on which to include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civil associations, medicine, education, voluntary health agencies, and officials of local, state and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact. It is not the intent of this Act to withdraw or affect Arkansas' continued membership, participation, and support of the Southern Interstate Nuclear Compact until at least nine (9) of the party states to the Southern Interstate Nuclear Compact approve substantially the same changes in the Compact as are provided in this Act, and the Congress of the United States consents to the Compact substantially as amended by this Act.

ARTICLE V

Powers

The Board shall have power to:

(a) Ascertain and analyze on a continuing basis the position of the South with respect to energy, energy-related industries, and environmental concerns.

(b) Encourage the development, conservation, and responsible use of energy and energy-related facilities, installations, and products as part of a balanced economy and healthy environment.

(c) Collect, correlate, and disseminate information relating to civilian uses of energy and energy-related materials and products.

(d) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspect of:

(1) energy, environment and applications of energy, environmental, and related concerns to industry, medicine, or education or the promotion or regulation thereof;

(2) the formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of energy and energy-related materials, products, installations, or wastes.

(e) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations of energy product, material, or equipment use and disposal and of proper techniques or processes for the application of energy resources to the civilian economy or general welfare.

(f) Undertake such nonregulatory functions with respect to sources of radiation as may promote the economic development and general welfare of the region.

(g) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to energy and environmental fields.

(h) Recommend such changes in, or amendments or additions to, the laws, codes, rules, regulations, and administrative procedures and practices or ordinances of the party states in any of the fields of its interest and competence as in its judgment may be appropriate. Any such recommendation shall be made through the appropriate state agency with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(i) Prepare, publish and distribute, (with or without charge) such reports, bulletins, newsletters or other material as it deems appropriate.

(j) Cooperate with the United States Department of Energy or any agency successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interests.

(k) Act as licensee of the United States Government or any party state with respect to the conduct of any research activity requiring such license and operate such research facility or undertake any program pursuant thereto.

(l) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of energy and environmental incidents in the area comprising the party states, to coordinate the nuclear, environmental, and other energy-related incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states, and to facilitate the rendering of aid by the party states to each other in coping with energy and environmental incidents. The Board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with energy and environmental incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

ARTICLE VI

Supplementary Agreements

(a) To the extent that the Board has not undertaken an activity or project which would be within its power under the provisions of Article V of this compact, any two (2) or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the Board. The Board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the Board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the Board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

ARTICLE VII

Other Laws and Relationships

Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rules, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the Atomic Energy Commission, the United States Department of Energy, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress.

(c) Alter the relations between and respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the Board to exercise any regulatory authority or to own or operate any nuclear reactor for the generation of electric energy; nor shall the Board own or operate any facility or installation for industrial or commercial purposes.

ARTICLE VIII

Eligible Parties, Entry into Force and Withdrawal

(a) Any or all of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, the Commonwealth of Puerto Rico, and the United States Virgin Islands shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided that it shall not become initially effective until enacted into law by seven (7) states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw.

ARTICLE IX

Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

History. Acts 1961, No. 429, § 1; 1967, No. 236, § 1; 1979, No. 1112, § 1; A.S.A. 1947, § 9-1101.

Meaning of "this act". Acts 1961, No. 429, codified as §§ 15-10-401 — 15-10-404.

15-10-402. Arkansas board members.

(a) The three (3) Arkansas members on the Southern States Energy Board shall be selected as follows:

(1) The Governor shall be ex officio a member of the board, or the Governor, at his or her discretion, may name some other resident

elector of this state to serve on the board in his or her place, to serve at the pleasure of the Governor;

(2)(A) At each regular session of the General Assembly, the Speaker of the House of Representatives shall name one (1) member thereof to serve on the board.

(B) This member shall serve until the convening of the next regular session of the General Assembly or until his or her successor is appointed; and

(3)(A) At each regular session of the General Assembly, the President Pro Tempore of the Senate shall name one (1) member of the Senate to serve on the board.

(B) This member shall serve until the convening of the next regular session of the General Assembly or until his or her successor is appointed.

(b) Vacancies on the board shall be filled in the manner provided herein for the initial appointment.

(c)(1) Legislative members of the board shall be reimbursed for their reasonable and necessary expenses for meals, lodging, travel, and related expenses for attending board meetings, with these expenses to be paid from funds available to their respective houses of the General Assembly.

(2)(A) The Governor or the member of the board appointed to serve in the place of the Governor shall be reimbursed for travel expenses in attending board meetings.

(B) These expenses shall be payable from funds available for the support of the Governor's office or from funds available to a state agency if the member appointed to serve on the board in the place of the Governor is an official or employee of a state agency.

History. Acts 1961, No. 429, § 2; 1979, No. 1112, § 2; A.S.A. 1947, § 9-1102; Acts 1997, No. 1357, § 2.

Cross References. Compensation of state boards, § 25-16-901 et seq.

15-10-403. Supplementary agreements — Appropriations.

(a) Any supplementary agreement entered into pursuant to Article VI of the Southern States Energy Compact, § 15-10-401, and requiring the expenditure of funds or the assumption of an obligation to expend funds shall not become effective as to this state prior to the making of an appropriation for it by the General Assembly.

(b) Provided, that with respect to the payment of this state's share of the budget of expenditures for the maintenance of the Southern States Energy Board as provided in Article III(b) of the Southern States Energy Compact, § 15-10-401, the Governor, in the absence of a specific legislative appropriation for the purpose, may use such appropriations as are made available to him or her for emergency expenditures.

History. Acts 1961, No. 429, § 3; A.S.A. 1947, § 9-1103.

15-10-404. Officers, departments, agencies, and institutions authorized to cooperate with board.

All officers, departments, agencies, and institutions of this state and of its political subdivisions are authorized to cooperate with the Southern States Energy Board in the furtherance of any of its activities pursuant to the Southern States Energy Compact, § 15-10-401.

History. Acts 1961, No. 429, § 4; 1979, No. 1112, § 3; A.S.A. 1947, § 9-1104.

SUBCHAPTER 5 — ALTERNATIVE FUELS

SECTION.

15-10-501 — 15-10-505. [Repealed.]

15-10-501 — 15-10-505. [Repealed.]

Publisher's Notes. This subchapter, concerning alternative fuels, was repealed by Acts 1999, No. 1133, § 2. The subchapter was derived from the following sources:

15-10-501. Acts 1991, No. 659, § 1.

15-10-502. Acts 1991, No. 659, § 2; 1993, No. 960, § 5; 1997, No. 250, § 100.

15-10-503. Acts 1991, No. 659, § 4.

15-10-504. Acts 1991, No. 659, § 3; 1997, No. 250, § 101.

15-10-505. Acts 1991, No. 659, § 5.

SUBCHAPTER 6 — ALTERNATIVE FUELS COMMISSION

SECTION.

15-10-601 — 15-10-603. [Repealed.]

15-10-601 — 15-10-603. [Repealed.]

Publisher's Notes. This subchapter, concerning Alternative Fuels Commission, was repealed by Acts 2007, No. 873, § 3. The former subchapter was derived from the following sources:

15-10-601. Acts 2003, No. 174, § 1.

15-10-602. Acts 2003, No. 174, § 1.

15-10-603. Acts 2003, No. 174, § 1.

SUBCHAPTER 7 — ALTERNATIVE FUELS FUND AND ARKANSAS WEATHERIZATION ASSISTANCE FUND

SECTION.

15-10-701 — 15-10-704. [Repealed.]

15-10-701 — 15-10-704. [Repealed.]

Publisher's Notes. This subchapter, concerning Alternative Fuels Fund and Arkansas Weatherization Assistance Fund, was repealed by Acts 2007, No. 873, § 4. The former subchapter was derived from the following sources:

15-10-701. Acts 2003, No. 120, § 1; 2003, No. 121, § 1.

15-10-702. Acts 2003, No. 120, § 2; 2003, No. 121, § 2.

15-10-703. Acts 2003, No. 120, § 3; 2003, No. 121, § 3.

15-10-704. Acts 2003, No. 120, § 4; 2003, No. 121, § 4.

SUBCHAPTER 8 — ARKANSAS ALTERNATIVE ENERGY COMMISSION

SECTION.	SECTION.
15-10-801. Arkansas Alternative Energy Commission.	15-10-802. Duties.

15-10-801. Arkansas Alternative Energy Commission.

- (a) There is created the Arkansas Alternative Energy Commission.
- (b) The commission shall consist of fifteen (15) diverse members appointed as follows:
 - (1) Five (5) members appointed by the Governor as follows:
 - (A) Two (2) members to represent utility companies that are concerned with alternative energy development; and
 - (B) Three (3) members who are consumers concerned with alternative energy development;
 - (2) Five (5) members appointed by the Speaker of the House of Representatives as follows:
 - (A) Two (2) members to represent utility companies that are concerned with alternative energy development; and
 - (B) Three (3) members who are consumers concerned with alternative energy development; and
 - (3) Five (5) members appointed by the President Pro Tempore of the Senate as follows:
 - (A) Two (2) members to represent utility companies that are concerned with alternative energy development; and
 - (B) Three (3) members who are consumers concerned with alternative energy development.
- (c)(1) The Governor shall appoint a chair for the commission.
- (2) The chair shall call the first meeting of the commission within sixty (60) days after July 31, 2009.
- (d)(1) A majority of the membership of the commission shall constitute a quorum.
- (2) A majority vote of those members present shall be required for any action of the commission.
- (e) The commission shall meet at least one (1) time every three (3) months but may meet more often at the call of the chair.
- (f) A vacancy arising in the membership of the commission for any reason other than expiration of the regular terms for which the members are appointed shall be filled by appointment by the person or persons who appointed the vacating member.
- (g)(1) The Bureau of Legislative Research shall provide staff for the commission.
- (2) The commission shall conduct its meetings in Pulaski County at the State Capitol or at other locations that the commission considers appropriate.

History. Acts 2009, No. 1301, § 1.

15-10-802. Duties.

The Arkansas Alternative Energy Commission shall study:

(1) The feasibility of creating or expanding alternative energy sources in Arkansas, including without limitation:

(A)(i) Bioenergy, including without limitation energy from biomass.

(ii) As used in subdivision (a)(1)(A)(i) of this section:

(a) "Biomass" includes agricultural waste, wood waste, poultry litter, and animal waste; and

(b) "Poultry litter" means poultry manure combined with wood shavings, straw, rice hulls, and other bedding material;

(B) Ethanol;

(C) Solar power;

(D) Energy derived from animal waste;

(E) Wind power; and

(F) Other energy sources identified by the commission;

(2) The effects of the use of alternative energy sources on the economic development of the state; and

(3) Other issues related to alternative energy production and use and the economic impact of alternative energy that the commission considers appropriate.

History. Acts 2009, No. 1301, § 1.

CHAPTER 11

PUBLICITY AND TOURISM

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STATE PARKS, RECREATION, AND TRAVEL COMMISSION.
3. TOURIST INFORMATION BUREAUS.
4. REGIONAL TOURIST PROMOTION AGENCIES.
5. ARKANSAS TOURISM DEVELOPMENT ACT.
6. KEEP ARKANSAS BEAUTIFUL COMMISSION.
7. WILDLIFE OBSERVATION TRAILS PILOT PROGRAM.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

15-11-101. Publicity generally.

15-11-102. Promulgation of rules and procedures.

Effective Dates. Acts 1937, No. 265, § 6: Mar. 17, 1937. Emergency clause provided: "It is hereby ascertained and declared to be a fact that the abundant resources of the State of Arkansas are

such as to attract to the State many persons from other sections whose industry will add greatly to the wealth and prestige of the State; that due to the failure of properly advertising of the State's re-

sources in other sections of the country, wrong impressions concerning the State are abroad; that the proper advertisement of the State and its resources will promote the common good of the State. Therefore, an emergency is found to exist and this act being necessary for the preservation of the public peace, health and safety, shall be in force and take effect from and after its passage and approval."

Acts 1981, No. 931, § 40: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a

two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

15-11-101. Publicity generally.

It shall be the duty of the Director of the Department of Parks and Tourism to:

(1) Devote his or her entire time to the carrying out of the provisions of this section;

(2) Make available and make use of the materials and information assembled by state agencies and gather additional information and materials concerning the state's resources, its departments of government, and its institutions;

(3) Make this information available to the newspapers, magazines, and other media of publicity for the preparation of articles and stories favorable to the state, its resources, its institutions, and its departments of government;

(4) Prepare paid advertisements favorable to the State of Arkansas and, subject to the approval of the State Parks, Recreation, and Travel Commission, expend such state funds as may be made available for this purpose in the publication of advertisements in magazines, newspapers, and other periodicals, either directly with advertising media or through the services of a recognized advertising agency on a commission basis regularly allowed by the advertising media;

(5) Assemble and prepare material for the publication of pamphlets, booklets, folders, maps, brochures, and other similar advertising matter concerning the State of Arkansas and contract, subject to the approval of the commission, for the reproduction of advertising matter;

(6) Distribute advertising matter to the general public or to special groups for which it is intended, either by mail or other method; and

(7) Assist and aid the various departments of state in the preparation and distribution of pamphlets, booklets, folders, etc., when it may be deemed advisable to give publicity to the activities of any department or to inform the public of the activities, rules, regulations, or requirements of the state government.

History. Acts 1937, No. 265, § 5; Pope's Dig., § 12030; A.S.A. 1947, § 9-201.

15-11-102. Promulgation of rules and procedures.

(a) The Department of Parks and Tourism is specifically authorized to promulgate its own rules and procedures applying to the purchase of printed material and specialty items for advertising purposes. The Department of Parks and Tourism will take no less than a minimum of three (3) bids in purchasing printing and specialty items. The records pertaining to the bidding procedures, bids, and contract awards will be made a part of the permanent record file of the Department of Parks and Tourism, and copies will be forwarded to the purchasing department of the Department of Finance and Administration.

(b) The Department of Parks and Tourism is specifically authorized to promulgate its own rules and procedures applying to the professional services of an advertising agency. The Department of Parks and Tourism will take proposals and contract with an advertising agency with the advice of the Legislative Council.

History. Acts 1981, No. 931, §§ 35, 44; A.S.A. 1947, §§ 9-229, 9-230.

SUBCHAPTER 2 — STATE PARKS, RECREATION, AND TRAVEL COMMISSION

SECTION.

- 15-11-201. Purpose — Creation.
- 15-11-202. Members generally.
- 15-11-203. Commissioner emeritus.
- 15-11-204. Organization — Meetings.
- 15-11-205. Director of the Department of Parks and Tourism.
- 15-11-206. Functions, powers, and duties.
- 15-11-207. Cooperation with news media representatives.

SECTION.

- 15-11-208. Effect of §§ 15-11-201 and 15-11-202.
- 15-11-209. [Repealed.]
- 15-11-210. Award of pistol upon retirement.
- 15-11-211. Disposal of railroad track material.

Cross References. Tourist information bureaus to be established and maintained by State Highway Commission, § 27-65-114.

Effective Dates. Acts 1955, No. 330, § 11: June 30, 1955.

Acts 1969, No. 85, § 5: Feb. 21, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that Arkansas has great unexplored scenic beauty and many areas that are best suited for recreational and tourist attractions; that these natural resources have not been developed to their full potential; that a state agency qualified in this field should exploit and promote by all

available means the recreational and travel potential of this state; and that in order to accomplish this purpose by broadening the scope of the Publicity and Parks Commission it is necessary that this act become effective. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1971, No. 86, § 5: Feb. 12, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law, the Parks, Recreation and Travel Commission is

composed of seven (7) members, and that it is essential to the continued industrial growth and expansion of the tourist industry in this state that the membership of the Commission be increased in order that the various areas of the state may be better represented on the Commission; that this act is designed to increase the membership of the Parks, Recreation and Travel Commission from seven (7) to eleven (11) members and thereby give greater representation to the various areas of the state in matters regarding industrial development, natural resources, state parks, and the tourist industry generally and that this act should be given effect immediately to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 819, § 3: July 1, 1973.

Acts 1975, No. 272, §§ 4, 5: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the salary and expense allowance of the Secretary of the County Board of Education is unduly restrictive; but it is essential to the effective and efficient operation of the public school system that this undue restriction be removed and that this act be given effect on July 1, 1975; that an extension of the regular session of the General Assembly might extend the effective date hereof past July 1, 1975, unless an emergency is declared and such delay in the effective date hereof would result in irreparable harm. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1975."

Acts 1975, No. 478, §§ 4, 5: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the salary and expense allowance of the Secretary of the County Board of Education is unduly restrictive; that it is essential to the effective and efficient operation of the public school system that this undue restriction be removed and that this act be given effect on July 1, 1975; that an extension of the regular

session of the General Assembly might extend the effective date hereof past July 1, 1975, unless an emergency is declared and that such delay in the effective date hereof would result in irreparable harm. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1975."

Acts 1979, No. 213, § 3: Feb. 23, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that persons who have rendered long and dedicated service on the Parks, Recreation, and Travel Commission have gained considerable knowledge and experience which is a vital asset to the functioning of said Commission, and that the immediate passage of this Act is necessary to authorize the 'Commissioner Emeritus' status for any past, present, or future member of said Commission who served for a period of twenty-four or more years, to authorize said person to continue to serve as a 'Commissioner Emeritus' on said Commission, thereby gaining the benefits of the experience and knowledge of said person in the continued work of said Commission. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 862, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1035 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 868, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1076 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of

1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 679, § 2: Mar. 29, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that no specific authority exists for the Arkansas State Parks, Recreation, and Travel Commission and the Department of Parks and Tourism to give surplus rail and other railroad track material to a regional intermodal facilities authority, a metropolitan port authority, or a planning and development district; and that this act is immediately necessary to continue rail service to meet the transportation needs of the public and to promote economic development and industrial growth. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-11-201. Purpose — Creation.

For the purpose of aiding in the establishment of new industrial enterprises and the expansion of the tourist industry, and additionally, for furnishing authentic and favorable information about this state and its people through publicizing the State of Arkansas with respect to its natural resources, its agricultural and industrial possibilities, its historic background and cultural attainments, its educational, religious, and recreational facilities, its climate, its water resources, and transportation facilities, and, for the purpose of promoting the health and pleasure of the people of this and other states through the

management, improvement, and extension of the state park system, there is created and established at the seat of government of this state a State Parks, Recreation, and Travel Commission, hereinafter referred to as the "commission".

History. Acts 1955, No. 330, § 1; 1969, No. 85, § 1; 1971, No. 86, § 1; 1975, No. 132, § 1; 1975, No. 272, § 3; 1975, No. 478, § 3; A.S.A. 1947, § 9-202.

Publisher's Notes. Acts 1969, No. 85, § 4, provided that where existing laws referred to the Arkansas Publicity and

Parks Commission they should thereafter mean the State Parks, Recreation, and Travel Commission.

Acts 1971, No. 38, § 7, transferred the State Parks, Recreation, and Travel Commission, by a type 4 transfer, to the Department of Parks and Tourism.

CASE NOTES

Cited: State ex rel. Publicity & Parks Comm'n v. Earl, 233 Ark. 348, 345 S.W.2d 20 (1961).

15-11-202. Members generally.

(a) The State Parks, Recreation, and Travel Commission shall consist of:

(1)(A) Twelve (12) regular members, of whom at least:

(i) One (1) shall be an active newspaper staff member, editorial worker, or editor;

(ii) One (1) shall be active in radio or television broadcasting;

(iii) One (1) shall be active in any recognized news media in the state; and

(iv) Two (2) whose primary occupation shall embrace the recreational or travel field of endeavor.

(B)(i) Vacancies occurring on the commission after August 1, 1985, shall be filled by the Governor in such manner that at least five (5) of the members of the commission shall be owners or operators of food service, lodging, or travel-oriented businesses.

(ii) A travel-oriented business includes, but is not limited to, boat docks, marinas, theme parks, camp grounds, tourist resorts, caves, caverns, highway gift shops, and firms commonly known as tourist attractions.

(iii) The Governor also shall assure that at least one (1) of the members of the commission is active in the news media in this state.

(iv) Subdivisions (a)(1)(B)(i)-(iii) of this section shall not cut short the term of any member of the commission serving as such on August 1, 1985, but shall be implemented by the filling of vacancies;

(2) One (1) member who is sixty (60) years of age or over, who shall serve as a representative of the elderly and who shall not be actively engaged in or retired from any of the professions set out in subdivision (a)(1)(A) of this section; and

(3) One (1) or more commissioner emeritus.

(b) Each member shall be a resident elector of this state and shall be appointed by the Governor by and with the advice and consent of the Senate.

(c) Each of the four (4) congressional districts of the state, as established by Acts 1971, No. 23 [repealed], shall be represented on this commission.

(d)(1) All members appointed to the commission shall be appointed for terms of six (6) years.

(2) The term of office shall commence on January 15 following the expiration date and shall end on January 14 of the sixth year following the year in which the regular term commenced.

(e) Any vacancies arising in the membership of the commission for any reason other than expiration of the regular terms for which members were appointed shall be filled by appointment by the Governor and be thereafter effective until the expiration of their regular terms, subject, however, to the confirmation of the Senate when it is next in session.

(f) Before entering upon their respective duties, each member of the commission shall take and subscribe and file in the office of the Secretary of State an oath to support the Constitution of the United States and the Constitution of the State of Arkansas and to faithfully perform the duties of the office upon which he or she is about to enter.

(g) Members of the commission shall not receive compensation for their services but may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1955, No. 330, §§ 1-3, 6; 1969, No. 85, § 1; 1971, No. 86, § 1; 1973, No. 819, § 1; 1975, No. 132, §§ 1-3; 1975, No. 272, § 3; 1975, No. 478, § 3; 1975 (Extended Sess., 1976), No. 1076, § 1; 1979, No. 684, § 1; 1981, No. 638, § 1; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1985, No. 465, §§ 1, 2; 1985, No. 935, § 1; A.S.A. 1947, §§ 6-616, 6-623 — 6-626, 9-202, 9-203 — 9-203.4, 9-204, 9-207; reen. Acts 1987, No. 862, § 1; reen. 1987, No. 868, § 1; 1997, No. 250, § 102.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 862, § 1, and by Acts 1987, No. 868, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other

legislation would be controlling in the event of conflict.

Publisher's Notes. As originally constituted, the State Parks, Recreation, and Travel Commission had only seven members whose terms were staggered so that one term was to expire every year. The 1971 amendment to this section increased the number of commission members to eleven, arranged their terms so that one term would continue to expire every year, and provided that successors to the original eleven member commission should serve eleven year terms. However, the 1975 amendment to this section increased the number of commission members to twelve, provided that each of the twelve members should serve six year terms, repealed § 2 of the 1971 amendment regarding the staggering of terms.

CASE NOTES

Cited: State ex rel. Publicity & Parks Comm'n v. Earl, 233 Ark. 348, 345 S.W.2d 20 (1961).

15-11-203. Commissioner emeritus.

(a) Any person who has served, is now serving, or serves in the future as a member for the State Parks, Recreation, and Travel Commission, as established by §§ 15-11-201, 15-11-202, and 15-11-204 — 15-11-207, or its predecessor commissions and who has served or serves twenty-four (24) years as a member of the commission or its predecessor commissions shall be known and designated as a “commissioner emeritus”.

(b) A commissioner emeritus shall serve as a member of the commission for the remainder of his or her life and shall be notified of all commission meetings and is entitled to the same expenses and other allowances for attending commission meetings as is provided by law for other commission members.

(c) The Governor shall cause an appropriate commission to be prepared and issued to each commissioner emeritus of the commission. The commissioner emeritus shall file the commission with the Secretary of State and take the official oath of office before entering upon his or her duties as a commissioner emeritus.

History. Acts 1979, No. 213, § 1; A.S.A. 1947, § 9-202.4.

15-11-204. Organization — Meetings.

(a) From time to time, the State Parks, Recreation, and Travel Commission shall select from its membership a chair and a vice chair.

(b) The Director of the Department of Parks and Tourism provided for in § 15-11-205 shall be ex officio Secretary of the State Parks, Recreation, and Travel Commission but shall have no vote on matters coming before it.

(c) The commission shall adopt and may modify rules for the conduct of its business and shall keep a record of its transactions, findings, and determinations. The record shall be public.

(d) Meetings shall be at the call of the Chair of the State Parks, Recreation, and Travel Commission either at his or her own instance or upon the written request of at least seven (7) members.

(e) A quorum shall consist of not fewer than seven (7) members present at any regular or special meeting. A majority affirmative vote of that number shall be necessary for the disposition of any business.

History. Acts 1955, No. 330, § 6; 1973, No. 819, § 1; 1975 (Extended Sess., 1976), No. 1076, § 1; 1979, No. 684, § 1; 1981, No. 638, § 1; 1985, No. 935, § 1; A.S.A. 1947, § 9-207; reen. Acts 1987, No. 868, § 1.

A.C.R.C. Notes. This section was reen-

acted by Acts 1987, No. 868, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

15-11-205. Director of the Department of Parks and Tourism.

(a) The State Parks, Recreation, and Travel Commission, with the approval of the Governor, shall employ a Director of the Department of Parks and Tourism who shall be charged with the duty of administering the provisions of this subchapter and the rules, regulations, and orders established thereunder.

(b) The commission, by resolution duly adopted, may delegate to the Director of the Department of Parks and Tourism any of the powers or duties vested in or imposed upon it by this subchapter, and the delegated powers and duties may be exercised by the Director of the Department of Parks and Tourism in the name of the commission.

(c) The Director of the Department of Parks and Tourism shall:

(1) Be selected with special reference to his or her executive ability, experience, and interest in the resources and development of the state;

(2) Be a person with at least five (5) years' experience in the newspaper or radio profession in an editorial or advertising capacity;

(3) Be custodian of all property held in the name of the commission;

(4) Be ex officio the disbursing agent of all funds available for its use; and

(5)(A) Furnish a bond to the state with a corporate surety thereon in the penal sum of ten thousand dollars (\$10,000), conditioned that he or she will faithfully perform his or her duties of employment and properly account for all funds received and disbursed by him or her.

(B) An additional disbursing agent's bond shall not be required of the Director of the Department of Parks and Tourism.

(C) The bond so furnished shall be filed with the Secretary of State and an executed counterpart of the bond shall be filed with the Auditor of State.

(d)(1) The Director of the Department of Parks and Tourism, subject to approval of the commission, shall employ a Director of State Parks and a Director of Recreation and Travel and such assistants and other personnel as necessary to properly administer the provisions of this subchapter, with the duties of both directors and such assistants as appointed to be independent of the other, but they shall cooperate as necessary for the proper performance of the commission.

(2) The Director of Recreation and Travel, as appointed by the Director of the Department of Parks and Tourism, shall be a person with a background in the travel service industry or editorial experience in news media with a minimum of three (3) years' experience in news media or travel service, with special consideration being given to a background in advertising.

History. Acts 1955, No. 330, § 7; 1969, No. 85, § 3; A.S.A. 1947, § 9-208.

A.C.R.C. Notes. The operation of subdivision (c)(5) of this section was suspended by adoption of a self-insured fidelity bond program for state officers, officials, and employees, effective July 20,

1987, pursuant to § 21-2-701 et seq. Subdivision (c)(5) of this section may again become effective upon cessation of coverage under that program. See § 21-2-703.

The provisions of subsection (d) of this section as to procedure for employing the director and employment by him of the

directors may be affected by §§ 25-2-107 and 25-13-101. Acts 1971, No. 38, § 7, transferred the State Parks, Recreation and Travel Commission to the Department of Parks and Tourism by a type 4 transfer. Section 25-13-101, which codifies the general and permanent provisions of Acts 1971, No. 38, § 7, provides that the director of the department shall be appointed by the Governor with the consent of the Senate. However, § 25-2-107 con-

cerning type 4 transfers, provides that the director of a transferred department shall be nominated by the board or commission or governing body of the transferred agency, subject to confirmation by the Governor, and shall serve at the pleasure of the Governor. As to designation by the director of division heads, § 25-13-101 provides that the director shall appoint the heads of the respective divisions, with the advice and consent of the Governor.

15-11-206. Functions, powers, and duties.

(a) The State Parks, Recreation, and Travel Commission shall:

(1) Have and be subject to all functions, powers, and duties as by law are conferred and imposed upon it; and

(2) For the purpose of regulating its own procedure and carrying out its functions, have the authority from time to time to make, amend, and enforce all reasonable rules or regulations not inconsistent with law which will aid in the performance of any of the functions, powers, or duties conferred or imposed upon it by law.

(b) In addition, it shall be the function, power, and duty of the commission to:

(1) Cooperate with other state agencies, civic organizations, and others similarly interested in preparing, correlating, and distributing information in furtherance of the commission's functions and to furnish or otherwise make such information available, without cost to the recipients, in such manner as the commission shall determine to all who may have an interest therein and, for such purpose, the executive head of each state agency shall furnish such information as shall be requested of him or her by the commission;

(2) Contract and be contracted with;

(3) Purchase, lease, rent, or sell and receive bequests or donations of any real, corporeal, or personal property;

(4) Exploit and promote by all available means the recreational and travel potentialities of the state;

(5) Acquire such land within the state as it may deem necessary or proper to the extension, development, or improvement of the state park system and, when necessary to properly carry out its functions, to acquire any real property by the exercise of its right of eminent domain, this right being vested in the commission;

(6) Require a strict accounting of all business transacted by each concessionaire operating at a state park; and

(7) Take such other action not inconsistent with law as it may deem necessary or desirable to carry out the intent and purposes of this subchapter.

History. Acts 1955, No. 330, §§ 4, 5; 1969, No. 85, § 2; A.S.A. 1947, §§ 9-205, 9-206.

Publisher's Notes. As to receipt of revenues or other moneys, subdivision (b)(3) may be affected by § 22-4-310.

RESEARCH REFERENCES

Ark. L. Rev. Acquisition of Public Recreational Access to Privately-Owned Property: Devices, Problems, and Incentives, 29 Ark. L. Rev. 514.

CASE NOTES

Deposit of Pledged Revenue.

This section does not supersede § 22-4-310 which requires pledged revenue for

refunding bonds to be deposited in banks. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

15-11-207. Cooperation with news media representatives.

(a) The Director of the Department of Parks and Tourism and his or her staff shall cooperate with representatives of newspapers, magazines, and radio and television stations but shall not otherwise be identified with any of these enterprises.

(b)(1) All information or publicity originated or developed by the director and his or her staff shall be released to all news media at times agreeable to a majority of the representatives thereof who are assigned to the State Capitol Building.

(2) However, upon the request of any such representative or other individual for specific information not theretofore originated and developed for a news release by the director or his or her staff, the director shall furnish the news release to the individual making the request without regard to the provision of subdivision (b)(1) of this section.

(c) Nothing in this subchapter shall be construed as an abridgement of the freedom of the press or speech nor of the right of the executive head of any state agency to discuss freely with the representatives of the various news media any of the affairs of his or her agency.

History. Acts 1955, No. 330, § 8; A.S.A. 1947, § 9-209.

15-11-208. Effect of §§ 15-11-201 and 15-11-202.

Nothing in §§ 15-11-201 and 15-11-202 shall be deemed to affect in any manner the placing of the State Parks, Recreation, and Travel Commission under any other principal department or subdivision of a principal department by any law now or hereafter enacted.

History. Acts 1971, No. 86, § 3; A.S.A. 1947, § 9-202.3.

15-11-209. [Repealed.]

Publisher's Notes. This section, concerning the general distribution of severance tax, was repealed by Acts 1999, No.

15, § 2. The section was derived from Acts 1993, No. 1156, § 5.

15-11-210. Award of pistol upon retirement.

When a commissioned law enforcement officer of the State Parks Division of the Department of Parks and Tourism retires from service in good standing after twenty (20) years of service, in recognition of and appreciation for the service of the retiring officer, the Director of the State Parks Division may award to the officer the pistol carried by the officer at the time of his or her retirement from service.

History. Acts 2005, No. 1375, § 1.

15-11-211. Disposal of railroad track material.

(a) The State Parks, Recreation, and Travel Commission and the Department of Parks and Tourism are authorized to dispose of rail and other railroad track material by gift or contract to a regional intermodal facilities authority organized pursuant to the Regional Intermodal Facilities Act, § 14-143-101 et seq., a metropolitan port authority organized pursuant to the Metropolitan Port Authority Act of 1961, § 14-185-101 et seq., or a planning and development district recognized by § 14-166-202.

(b) A regional intermodal facilities authority, a metropolitan port authority, or a planning and development district may receive and acquire the property described in subsection (a) of this section upon such terms and conditions acceptable to it and shall use the property for railroad purposes in accordance with the power and authority conferred by law.

(c) If a regional intermodal facilities authority, a metropolitan port authority, or a planning and development district subsequently sells the property described in subsection (a) of this section, the net proceeds received from disposition of the property, after deduction of all costs and expenses related thereto, shall be remitted to the State Parks, Recreation, and Travel Commission and the Department of Parks and Tourism.

History. Acts 2007, No. 679, § 1.

SUBCHAPTER 3 — TOURIST INFORMATION BUREAUS

SECTION.

- 15-11-301. Creation.
- 15-11-302. Department duties.
- 15-11-303. Commission duties.
- 15-11-304. Preferential treatment or consideration.

SECTION.

- 15-11-305. Cooperation with other state agencies.
- 15-11-306. Authority to lease facilities.

Effective Dates. Acts 1981, No. 931, § 40: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly,

that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1,

1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper adminis-

tration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

15-11-301. Creation.

The Department of Parks and Tourism is authorized and directed to establish, as funds are provided therefor, and to maintain and operate at or near the federal interstate highway points of entry into this state tourist information bureaus to perform the functions and duties as provided by this subchapter.

History. Acts 1965, No. 515, § 1; A.S.A. 1947, § 9-210.

A.C.R.C. Notes. Acts 1987, No. 381, § 1, provided for the construction and

operation of a tourist information center to be located on State Highway 68 in Siloam Springs, Arkansas.

15-11-302. Department duties.

Tourist information bureaus established pursuant to this subchapter shall:

- (1) Be open to the public at regular business hours and, during tourist seasons, shall be operated at such other hours as may be determined by the Department of Parks and Tourism;
- (2) Be situated at or near federal interstate highway points of entry into this state and be located convenient to access by the motoring public;
- (3) Be staffed by persons trained and informed concerning:
 - (A) The highways of this state;
 - (B) Sites of historical interest and importance;
 - (C) State parks and other public and private recreational facilities;
 - (D) Annual festivals, fairs, and other events of local, regional, or statewide importance of interest and appeal to tourists;
 - (E) The population of the state and the various counties and cities;
 - (F) The agricultural and industrial economy of the state;
 - (G) The natural and human resources that make the State of Arkansas attractive to industry and tourists; and
 - (H) Such other information and data concerning this state as may be deemed advisable by the Department of Parks and Tourism;
- (4) Maintain files, reference books, and sources of information to answer questions and to furnish information to tourists;
- (5)(A) Maintain facilities for the display of brochures, circulars, and other literature furnished the department by hotels, motels, restaurants, and other business establishments publicizing services for the accommodation and convenience of tourists.

(B) Provided, that the tourist information bureaus shall display the literature for the information and benefit of tourists without favoritism or prejudice to any business establishment; and

(6) Perform such other duties as determined by the department to be in furtherance of the purposes and intent of this subchapter.

History. Acts 1965, No. 515, § 2; A.S.A. 1947, § 9-211.

15-11-303. Commission duties.

In furtherance of the purposes of this subchapter, the State Parks, Recreation, and Travel Commission shall:

(1) Encourage the assistance and cooperation of public agencies and private businesses throughout the state in promoting the tourist industry;

(2) Have the authority to accept gifts, grants, and donations of property, both real and personal, to be used in furtherance of the purposes of this subchapter;

(3) Reject for display at any tourist information bureau any brochure, pamphlet, or other literature which is misleading or contains false representations; and

(4) Make reasonable rules and regulations and perform such other duties as may be in furtherance of the purposes of this subchapter.

History. Acts 1965, No. 515, § 3; A.S.A. 1947, § 9-212.

15-11-304. Preferential treatment or consideration.

In accepting gifts, grants, and donations, the State Parks, Recreation, and Travel Commission shall not make any agreement whereby the person or firm making the gift, grant, or donation shall receive any special consideration or preference from the commission or any tourist information bureau in the performance of the respective duties provided in this subchapter.

History. Acts 1965, No. 515, § 4; A.S.A. 1947, § 9-213.

15-11-305. Cooperation with other state agencies.

The State Highway Commission, the Arkansas State Game and Fish Commission, and all other state agencies are requested to cooperate and assist the Department of Parks and Tourism with respect to tourist information bureaus established under the provisions of this subchapter.

History. Acts 1965, No. 515, § 5; A.S.A. 1947, § 9-214.

15-11-306. Authority to lease facilities.

(a)(1) The Department of Parks and Tourism is authorized to lease existing buildings and facilities deemed suitable therefor by the department at or near the major highway points of entry into this state, may provide for the staffing and operation in buildings or facilities of tourist information centers, and may pay the necessary cost of maintenance, upkeep, and operation thereof.

(2) Tourist information centers shall be for the purpose of furnishing information to tourists entering this state with respect to the various attractions, opportunities, facilities, and other resources of this state which are of interest to tourists or which provide accommodations for their use or convenience while visiting this state.

(3) The department shall promulgate reasonable rules and regulations regarding the operation of such tourist information centers.

(b) In the event that it becomes necessary for the department to cease to operate any tourist information center in the state as a result of the shortage of funds, the State Parks, Recreation, and Travel Commission shall lease the tourist information center facility to a municipality or county in which it is located or to a nonprofit organization approved by the commission for an annual lease payment of ten dollars (\$10.00) per year to be operated by the lessee in a manner approved by the commission.

History. Acts 1965, No. 174, § 1; 1981, No. 931, § 28; A.S.A. 1947, §§ 9-215, 9-216.

SUBCHAPTER 4 — REGIONAL TOURIST PROMOTION AGENCIES**SECTION.**

- 15-11-401. Definitions.
- 15-11-402. Formation.
- 15-11-403. Designation.
- 15-11-404. Administrative agency.
- 15-11-405. Grants generally.
- 15-11-406. Grants from Department of Parks and Tourism.

SECTION.

- 15-11-407. Federal funds.
- 15-11-408. Matching state funds — Use, reversion, and reallocation.
- 15-11-409. Investigations and audits.
- 15-11-410. Brochures and other printed matter.

15-11-401. Definitions.

As used in this subchapter:

(1) "Commission" means the State Parks, Recreation, and Travel Commission or the Department of Parks and Tourism or any successor agency designated by law to promote tourist travel and vacation business in Arkansas;

(2) "Natural planning regions" means the respective counties composing each of the fourteen (14) natural planning regions as defined by the Arkansas Economic Development Council and which are outlined on the records and maps maintained by the Arkansas Economic

Development Council as natural planning regions of this state existing on August 6, 1969;

(3) "Regional tourist promotion agency" means a corporation organized pursuant to the provisions of the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., or the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., established for the purposes authorized in this subchapter and which is recognized by the commission or its successor agency as qualifying under the provisions of this subchapter; and

(4) "Tourism division" means the Tourism Division of the Department of Parks and Tourism or its successor agency.

History. Acts 1969, No. 310, § 1; A.S.A. 1947, § 9-221; Acts 1995, No. 1296, § 49; 1997, No. 540, § 38.

Cross References. The Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.

15-11-402. Formation.

(a)(1) Any group of interested citizens and residents of counties composing a natural planning region of this state and who are residents of counties representing not less than fifty percent (50%) of the total population of the region, but in no event fewer than fifteen (15) individuals, who shall form a nonprofit corporation pursuant to the provisions of the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., for the purpose of promoting tourist travel and vacation business in the counties composing the natural planning region and whose charters, bylaws, and purposes are in compliance with the rules and regulations promulgated by the State Parks, Recreation, and Travel Commission or the Department of Parks and Tourism pursuant to the provisions of this subchapter may apply for recognition by the commission as a regional tourist promotion agency under this subchapter.

(2) However, upon approval of the commission, a county in one (1) natural planning region of the state may be included within the area composing a different and adjacent natural planning region if and when experience establishes that the county tourist values are more closely identified with the other region.

(b)(1) In addition, any two (2) or more natural planning regions may merge to form a single regional tourist agency to represent the total area of the respective regions.

(2) However, no more than one (1) nonprofit corporation may be designated as the regional tourist promotion agency for the combined regions.

History. Acts 1969, No. 310, § 2; A.S.A. 1947, § 9-222.

Cross References. The Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.

15-11-403. Designation.

(a) The State Parks, Recreation, and Travel Commission or the Department of Parks and Tourism, upon receipt of a copy of incorpora-

tion papers, constitution, bylaws, and resolutions, if any, of a nonprofit corporation applying for recognition as a regional tourist promotion agency under the provisions of this subchapter, is authorized to designate the applying corporation as a regional tourist promotion agency under the provisions of this subchapter, provided that the commission shall determine:

(1) That the applying agency is established under the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., and has a constitution and bylaws governing the activities and purposes of the corporation which are in compliance with the rules and regulations of the commission established in furtherance of the purposes of this subchapter;

(2) That the charter, constitution, or bylaws of the applying agency provide for the selection of a board of directors and successor members on the boards, of persons who have demonstrated knowledge of and interest in the tourist travel and vacation business in the various counties composing the region to be served by the agency; and

(3) That the applying agency has furnished a proposed plan and demonstration of financial resources to establish and promote an active tourist travel and vacation business promotion program within the region as provided in this subchapter.

(b) Upon determining that an applying corporation is eligible for designation as a regional tourist promotion agency under the provisions of this subchapter, the State Parks, Recreation, and Travel Commission, upon a majority vote of the full membership of the commission, shall designate the agency as the participating agency under the provisions of this subchapter for the region and shall certify that fact to the applying agency.

(c) The commission is authorized to revoke its designation of any regional tourist promotion agency or to suspend the agency from participation in the provisions of this subchapter whenever the commission shall determine that the agency is not complying with this subchapter or with the rules and regulations of the commission or has failed to comply with the terms of any grant made to the agency pursuant to the provisions of this subchapter.

History. Acts 1969, No. 310, § 3; A.S.A. Nonprofit Corporation Act of 1993, § 4-33-1947, § 9-223.

101 et seq.

Cross References. The Arkansas

15-11-404. Administrative agency.

The Tourism Division of the Department of Parks and Tourism is designated as the administrative agency of this state to act under the authority of the State Parks, Recreation, and Travel Commission or the Department of Parks and Tourism in administering the provisions of this subchapter.

History. Acts 1969, No. 310, § 7; 1975, No. 281, § 1; A.S.A. 1947, § 9-227; Acts 1995, No. 1296, § 50.

15-11-405. Grants generally.

(a) All grants under the provisions of this subchapter shall be on a matching basis with the applying agency furnishing one-third ($\frac{1}{3}$) of the funds and the state grant being two (2) times the amount of the funds supplied by the applying agency.

(b) Upon approval of each application and the making of a grant by the State Parks, Recreation, and Travel Commission in accordance therewith, the State Parks, Recreation, and Travel Commission or the Department of Parks and Tourism shall give notice to the applying regional tourist promotion agency of the approval and grant and shall direct the regional promotion tourist agency to proceed with its promotional program as described in its application and to use therefor funds allocated by the regional tourist promotion agency for such purposes.

(c) Upon the furnishing of evidence to the commission that the particular regional tourist promotion agency has proceeded in accordance with the terms of the application, the grant allocated to the agency shall be paid to the agency by the Tourism Division of the Department of Parks and Tourism.

History. Acts 1969, No. 310, § 7; 1975, No. 281, § 1; A.S.A. 1947, § 9-227; Acts 1995, No. 1296, § 50.

15-11-406. Grants from Department of Parks and Tourism.

(a) Upon approval of the State Parks, Recreation, and Travel Commission, the Department of Parks and Tourism is authorized to make grants from funds specifically appropriated for such purposes to regional tourist promotion agencies, to assist such agencies in the financing of promotional and advertising programs, and to encourage and stimulate tourist travel and vacation business within the region.

(b) However, before any such grant may be made:

(1)(A) The regional tourist promotion agency shall have made application to the commission or the department for such a grant and shall have set forth therein the promotion and advertising program and project proposed to be undertaken for the purpose of encouraging and stimulating the tourist travel and vacation business within the region.

(B) The application shall further state, under oath or affirmation, the amount of funds held by or committed or subscribed to the regional tourist promotion agency for application to the purposes described in this section and the amount of the grant for which application is made; and

(2)(A) If after review of the application the commission is satisfied that the program of the regional tourist promotion agency appears to be in accord with the purposes of this subchapter, the commission shall authorize the making of a matching grant to the regional tourist promotion agency equal to the funds of the agency allocated by it to the program described in the application.

(B) However, the state grant shall not exceed an amount equal to the total amount apportioned to the region as outlined in this subchapter.

History. Acts 1969, No. 310, § 4; 1971, No. 368, § 1; 1973, No. 336, § 1; A.S.A. 1947, § 9-224.

15-11-407. Federal funds.

(a) The State Parks, Recreation, and Travel Commission or the Department of Parks and Tourism is authorized to accept gifts, grants, or donations from the federal government or agencies thereof, and some private individuals, foundations, or concerns to be used in furtherance of the purposes of this subchapter.

(b)(1) The commission shall annually review the amount of funds appropriated by the General Assembly and other funds that may be available therefor.

(2)(A) It shall apportion the funds at the beginning of each fiscal year on an equal basis to the various participating regional tourist promotion agencies or associations recognized by the commission.

(B) However, each region shall be eligible for at least one thousand dollars (\$1,000) annually but shall not be eligible for more than twenty percent (20%) of the appropriation made to the commission for the purposes set forth in this subchapter.

History. Acts 1969, No. 310, § 5; 1973, No. 336, § 2; A.S.A. 1947, § 9-225.

15-11-408. Matching state funds — Use, reversion, and reallocation.

(a)(1) The State Parks, Recreation, and Travel Commission shall promulgate reasonable rules and regulations regarding the use of matching funds that are available to the respective regional tourist promotion agencies.

(2) The funds available to each regional tourist promotion agency may be used for needed approved tourist promotion and advertising or research programs designed to encourage and stimulate the visitor and vacation business within the region and for operational and administrative expenses, as may have been approved by the commission or the Department of Parks and Tourism.

(b)(1) Matching funds available for operational and administrative expenses shall be limited to ten percent (10%) of the funds allocated to the regional tourist promotion agency.

(2) It is the intent of this section that no more than ten percent (10%) of the funds made available to a regional tourist promotion agency shall be used for operational or administrative expenses.

(c)(1) After six (6) months, unused state funds allocated to a regional tourist promotion agency shall revert to the commission to be reapportioned.

tioned on a pro rata basis to participating regional tourist promotion agencies with active programs.

(2) However, no one (1) agency shall receive in excess of twenty percent (20%) of the funds appropriated for grants under the provisions of this subchapter.

(d) In the event sufficient regional or local funds cannot be raised to match the state funds appropriated for the matching fund program by January 1 of each year, those state funds not applied for shall revert to the advertising and promotion budget of the Tourism Division of the Department of Parks and Tourism.

History. Acts 1969, No. 310, § 6; 1971, 1947, § 9-226; Acts 1991, No. 283, § 1; No. 368, § 2; 1973, No. 336, § 3; A.S.A. 1995, No. 1296, § 50.

15-11-409. Investigations and audits.

The State Parks, Recreation, and Travel Commission or the Tourism Division of the Department of Parks and Tourism from time to time may make such investigations and audits and require each participating agency to furnish such evidence or proof to determine that all funds granted under the provisions of this subchapter are being handled and expended for the purposes as approved by the commission or the Department of Parks and Tourism in awarding the grant.

History. Acts 1969, No. 310, § 7; 1975, No. 281, § 1; A.S.A. 1947, § 9-227; Acts 1995, No. 1296, § 50.

15-11-410. Brochures and other printed matter.

(a) Any brochures and other printed materials produced by the regional tourist promotion agencies or municipalities with state matching funds under the provisions of §§ 15-11-401 — 15-11-409 shall not be subject to state printing contracts.

(b) However, all such brochures and other printed matter shall be printed by Arkansas printing firms.

History. Acts 1971, No. 368, § 3; A.S.A. 1947, § 9-228.

SUBCHAPTER 5 — ARKANSAS TOURISM DEVELOPMENT ACT

SECTION.

- 15-11-501. Title.
- 15-11-502. Legislative intent.
- 15-11-503. Definitions.
- 15-11-504. Evaluation standards — Tourism attraction project applications.
- 15-11-505. Standards for preliminary and final approval of companies and projects.
- 15-11-506. Contracts.

SECTION.

- 15-11-507. Tourism attraction project sales tax credit.
- 15-11-508. Liberal construction.
- 15-11-509. Tourism attraction project income tax credit.
- 15-11-510. Special rules for certain lodging facilities.
- 15-11-511. Special rules — Qualified amusement parks.

Cross References. Imposition of gross receipts tax, § 26-52-301 et seq.

Tourism tax, § 26-63-401 et seq.

Tourism Development Trust Fund, §§ 19-5-956, 23-63-405.

Effective Dates. Acts 1997, No. 291, § 12: Feb. 27, 1997. Emergency clause provided: "It is hereby found and declared that tourism related industries and businesses are suffering severe and irreparable harm due to a decline in the number of tourists visiting this state; that the preservation of these tourist related industries and businesses is vitally important to the economy of this state; that unless additional tourist attractions are built and developed in Arkansas many current jobs in these tourist related industries and businesses will be lost forever and causing severe economic hardship in this state; that this act is designed to encourage the development and construction of tourist attractions in Arkansas and to preserve the jobs of those Arkansans who earn their livelihood from tourist related industries and businesses. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval."

Acts 1999, No. 1135, § 10: Apr. 6, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that Arkansas has yet to fully develop its potential in terms of attracting tourism to the state; that this act proposes incentives that will attract large tourism projects; that these projects will draw tourists from surrounding states, thereby stimulating the economy of the state; that it is necessary to compete with other states for the location of tourism attraction projects; that without viable incentives these projects are likely to locate elsewhere. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective

on the date the last house overrides the veto."

Acts 1999, No. 1510, § 5: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the by the Eighty-second General Assembly that the benefits derived from this act only apply to projects approved by the Director of the Arkansas Department of Economic Development between April 1, 1999 and September 1, 1999; and that unless this act goes into effect immediately the time frame for its application will expire or substantially have expired prior to the effective date of this act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 241, § 3: Feb. 17, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that amusement parks incur both state gross receipts tax and tourism tax liability; that amusement parks are a significant part of a local economy and encourage tourism for the benefit of the entire state; that existing law permits an amusement park to offset a portion of state gross receipts tax liability with credits earned through investing in the construction, expansion, or improvement of the park; that existing law does not allow an amusement park to offset any of its tourism tax liability with its earned credits; and that permitting an amusement park to offset its tourism tax liability with its earned credits will enable the amusement park to best utilize its revenues to support and promote the local and state-wide economy and tourism industry. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on the first day of the calendar month following: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the

Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 182, § 32: Jan. 1, 2008.

Acts 2007, No. 1039, § 4: Section 3 of this act shall apply retroactively to July 1, 2006.

Acts 2009, No. 672, § 2: Mar. 31, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that tourism could add much needed additional revenue to the state due to the economic

downturn of the state, that the current deadline for the Director of the Department of Economic Development to designate a lodging facility with certain restrictions as an approved company and authorize the undertaking of a tourism attraction project is prior to April 1, 2009, and that since additional time is needed, a two-year extension of the deadline is warranted. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on March 31, 2009.”

15-11-501. Title.

This subchapter shall be referred to and may be cited as the “Arkansas Tourism Development Act”.

History. Acts 1997, No. 291, § 1.

15-11-502. Legislative intent.

The General Assembly finds and declares that the general welfare and material well-being of the citizens of the State of Arkansas depend, in large measure, upon the development of tourism attractions in the state, and that it is in the best interests of the state to induce the creation of new or the expansion of existing tourism attractions within the state in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the inducements to be offered by the state to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by the state. The authority prescribed by this subchapter and the purposes to be accomplished under the provisions of this subchapter are proper governmental and public purposes for which public moneys may be expended. The inducement of the creation or expansion of tourism attraction projects is of paramount importance, mandating that the provisions of this subchapter be liberally construed and applied in order to advance public purposes.

History. Acts 1997, No. 291, § 2.

15-11-503. Definitions.

As used in this subchapter:

(1) “Agreement” means an agreement entered into pursuant to § 15-11-506 by and between the Director of the Arkansas Economic Development Commission and an approved company with respect to a tourism attraction project;

(2) "Approved company" means any eligible company that is seeking to undertake a tourism attraction project and is approved by the director pursuant to §§ 15-11-505 and 15-11-506;

(3) "Approved costs" means:

(A) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;

(B) The costs of acquiring real property or rights in real property in connection with a tourism attraction project and any costs incidental thereto;

(C) The cost of contract bonds and insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(D) All costs of architectural and engineering services, including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;

(E) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;

(F) All costs required for the installation of utilities in connection with a tourism attraction project, including, but not limited to, water, sewer, sewage treatment, gas, electricity, and communications, and including off-site construction of utility extensions paid for by the approved company; and

(G) All other costs comparable with those described in this section;

(4) "Director" means the Director of the Arkansas Economic Development Commission or the director's designated representative;

(5) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity that invests a minimum of five hundred thousand dollars (\$500,000) in a high-unemployment county or one million dollars (\$1,000,000) in any other county for the purpose of constructing, operating, or intending to operate a tourism attraction project, whether owned or leased, within the state that meets the standards promulgated by the director pursuant to § 15-11-504;

(6) "Final approval" means the action taken by the director authorizing the eligible company to receive inducements under §§ 15-11-507 and 15-11-509;

(7)(A) "High unemployment" means an unemployment rate equal to or in excess of one hundred fifty percent (150%) of the state's average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Department of

Workforce Services when the state's annual average unemployment rate is six percent (6%) or below.

(B) When the state's annual average unemployment rate is above six percent (6%), "high unemployment" means equal to or in excess of three percent (3%) above the state's average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Department of Workforce Services;

(8)(A) "Increased state sales tax liability" means that portion of an approved company's reported state sales, that is, gross receipts tax liability resulting from taxable sales of goods and services to its customers at the tourist attraction for any monthly sales tax reporting period after the approved company provides the certification required by § 15-11-507(b), which exceeds that reported state sales tax liability for sales to its customers for the same month in the calendar year immediately preceding that certification.

(B) If an approved company purchases an existing tourism attraction that was selling goods and services at the time of purchase and that may or may not have been entitled to the benefits of this subchapter prior to such a purchase, the "increased state sales tax liability" resulting from any investments in the tourism attraction by the new owners means that portion of the approved company's reported state sales, or gross receipts, tax liability resulting from taxable sales of goods and services to its customers at the tourism attraction for any monthly sales tax reporting period after the approved company provides the certification required by § 15-11-507(b), which exceeds the reported state sales tax liability for sales made by the seller of the tourism attraction for the same month in the calendar year immediately preceding that certification.

(C) The prohibitions against disclosure of confidential tax information provided in § 26-18-303 shall not apply for purposes of computing the credit available under this subchapter;

(9) "Inducements" means the Arkansas sales tax credit as prescribed in § 15-11-507 or the Arkansas income tax credit as prescribed in § 15-11-509, or both;

(10) "Investment threshold" means the minimum amount of approved costs that must be incurred in order to qualify for eligibility;

(11)(A)(i) "New full-time permanent employee" means a position or job which was created as a result of a tourism attraction project and which is filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned or claimed.

(ii) The employee or employees must work an average of at least thirty (30) hours per week.

(B) However, in order to qualify for the provisions of this subchapter, a contractual employee must be offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter;

(12) "Payroll" means the total taxable wages, including overtime and bonuses, paid during the preceding tax year of the approved company to

new full-time permanent employees hired after the date of the signed financial incentive agreement;

(13)(A) "Tourism attraction" means:

- (i) Cultural or historical sites;
- (ii) Recreational or entertainment facilities;
- (iii) Areas of natural phenomena or scenic beauty;
- (iv) Theme parks;
- (v) Amusement or entertainment parks;
- (vi) Indoor or outdoor plays or music shows;
- (vii) Botanical gardens; and
- (viii) Cultural or educational centers.

(B) A tourism attraction shall not include:

(i) Lodging facilities, unless the facilities constitute a portion of a tourism attraction project and represent less than sixty percent (60%) of the total approved costs of the tourism attraction project or unless the project meets the special rules outlined in § 15-11-510;

(ii) Facilities that are primarily devoted to the retail sale of goods, unless the goods are created at the site of the tourism attraction project or if the sale of goods is incidental to the tourism attraction project;

(iii) Facilities that are not open to the general public;

(iv) Facilities that do not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the tourism attraction project;

(v) Facilities owned by the State of Arkansas or a political subdivision of the state; or

(vi)(a) Facilities established for the purpose of conducting legalized gambling.

(b) However, a facility regulated under the Arkansas Horse Racing Law, § 23-110-101 et seq., or the Arkansas Greyhound Racing Law, § 23-111-101 et seq., shall be a tourism attraction for purposes of this subchapter for any approved project as outlined in subdivision (13)(A) of this section or for an approved project relating to pari-mutuel racing at the facility and not for establishing a casino or for offering casino-style gambling; and

(14) "Tourism attraction project" or "project" means the:

(A) Acquisition, including the acquisition of real estate by leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; and

(B) Construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including, but not limited to:

(i) Surveys;

(ii) Installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and

(iii) Off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located,

all of which are to be used to improve the economic situation of the approved company in a manner that will allow the approved company to attract persons.

History. Acts 1997, No. 291, § 3; 1999, No. 1135, § 1; 2001, No. 899, § 1; 2005, No. 2308, § 1.

Amendments. The 2005 amendment inserted “that invests a minimum ... purpose of constructing” in (5); added (10);

redesignated former (10)(A)(i) as present (11)(A)(i); rewrote present (11)(A)(ii); added (12); and redesignated former (11)(A) and (12) as present (13)(A) and (14).

15-11-504. Evaluation standards — Tourism attraction project applications.

(a) The Director of the Arkansas Economic Development Commission shall establish standards for the making of applications for inducements to eligible companies and their tourism attraction projects by the promulgation of administrative regulations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) With respect to each eligible company making an application to the director for inducements and with respect to the tourism attraction project described in the application, the director shall make inquiries and request materials of the applicant that shall include, but shall not be limited to:

(1) Marketing plans for the project that target individuals who are not residents of the state;

(2) A description and location of the project;

(3) Capital and other anticipated expenditures for the project that indicate that the total cost of the project shall exceed five hundred thousand dollars (\$500,000) in a high-unemployment county and one million dollars (\$1,000,000) in all other counties and the anticipated sources of funding for the project;

(4) The anticipated employment and wages to be paid at the project;

(5) Business plans which indicate the average number of days in a year in which the project will be in operation and open to the public; and

(6) The anticipated revenues and expenses generated by the project.

(c) The Arkansas Economic Development Commission shall analyze the data made available by the eligible company and collect and analyze additional information as is necessary to determine that the tourism attraction project will:

(1) Develop a marketing plan that targets at least twenty-five percent (25%) of its visitors from among persons who are not residents of the state;

(2) Have costs in excess of five hundred thousand dollars (\$500,000) in a high-unemployment county and one million dollars (\$1,000,000) in all other counties;

(3) Have a significant and positive economic impact on the state considering, among other factors, the extent to which the tourism attraction project will compete directly with existing tourism attractions in the state and the amount by which increased tax revenues from

the tourism attraction project will exceed the sales tax credit allowed pursuant to § 15-11-507;

(4) Produce sufficient revenues and public demand to be operating and open to the public on a regular and persistent basis; and

(5) Not adversely affect existing employment in the state.

History. Acts 1997, No. 291, § 4; 1999, No. 1135, § 2; 2005, No. 2308, § 2.

Amendments. The 2005 amendment inserted "in a high-unemployment county

and one million dollars (\$1,000,000) in all other counties" in (b)(3) and (c)(2); and substituted "for the project" for "thereof" at the end of (b)(3).

15-11-505. Standards for preliminary and final approval of companies and projects.

(a) The Director of the Arkansas Economic Development Commission shall establish standards for final approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) The Director of the Arkansas Economic Development Commission shall obtain the review and advice of the Director of the Department of Parks and Tourism prior to designating an entity as an approved company eligible for the tourism incentive.

(c) The Director of the Arkansas Economic Development Commission may give approval by designating an eligible company as an approved company and authorizing the undertaking of the tourism attraction project.

(d) The Director of the Arkansas Economic Development Commission shall review the information that has been made available to the director in order to determine whether the tourism attraction project will further the purposes of this subchapter.

(e) The criteria for final approval of eligible companies and tourism attraction projects shall include, but shall not be limited to, the criteria set forth in § 15-11-504(c).

(f) After a review of the relevant materials, other information made available to the Director of the Arkansas Economic Development Commission, the completion of other inquiries, and the review and advice of the Director of the Department of Parks and Tourism, the Director of the Arkansas Economic Development Commission may give final approval to the eligible company's application for a tourism attraction project and may grant the approval to the eligible company in the form of a financial incentive agreement.

History. Acts 1997, No. 291, § 5; 1999, No. 1135, § 3; 2005, No. 2308, § 3; 2007, No. 1039, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

"Department of Economic Development renamed Arkansas Economic Development Commission.

"(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned

to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the

Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

Amendments. The 2005 amendment, in (e), inserted “the approval” following “may grant” and substituted “in the form of a financial incentive agreement” for “the status of an approved company.”

The 2007 amendment inserted present (b), and redesignated the following subdivisions accordingly; inserted “and the review and advice of the Director of the Department of Parks and Tourism” in present (f); and made related changes.

15-11-506. Contracts.

(a) Upon granting final approval, the Director of the Arkansas Economic Development Commission may enter into an agreement with an approved company with respect to its tourism attraction project.

(b) The terms and provisions of each agreement shall include, but shall not be limited to:

(1) The amount of approved costs, which shall be determined by negotiations between the Director of the Arkansas Economic Development Commission and the approved company;

(2)(A)(i) The eligibility date for incurring project costs.

(ii) The eligibility date shall be the date by which the approved company shall have completed the tourism attraction project.

(B) Within three (3) months of the completion date, the approved company shall document the actual cost of the tourism attraction project through a certification of such costs by an independent certified public accountant acceptable to the Director of the Arkansas Economic Development Commission; and

(3) The following provisions:

(A)(i) The term shall be ten (10) years from the later of:

(a) The date of the final approval of the tourism attraction project; or

(b) The completion date specified in the agreement, if the completion date is within two (2) years of the date of the final approval of the tourism attraction project.

(ii) However, the term of the agreement may be extended for up to two (2) additional years by the Director of the Arkansas Economic Development Commission with the advice and consent of the Director of the Department of Finance and Administration, if the Director of the Arkansas Economic Development Commission determines that:

(a) The failure to complete the tourism attraction project within two (2) years resulted from unanticipated and unavoidable delay in the construction of the tourism attraction project;

(b) The tourism attraction project as originally planned will require more than two (2) years to complete; or

(c) The failure to complete the tourism attraction project within two (2) years resulted from a merger, acquisition, or other change in business ownership or business structure;

(B) In any sales tax reporting period during which an agreement is in effect, if the increased state sales tax liability of the approved company exceeds the state sales tax credit available to the approved company, then the approved company shall pay the excess to the state as sales tax;

(C) Within forty-five (45) days after the end of each calendar year, the approved company shall supply the Director of the Arkansas Economic Development Commission with such reports and certifications as the Director of the Arkansas Economic Development Commission may request, demonstrating to the satisfaction of the Arkansas Economic Development Commission that the approved company is in compliance with the provisions of this subchapter; and

(D) The approved company shall not receive a credit against the Arkansas sales tax imposed by § 26-52-301 et seq., with respect to any calendar year if in any calendar year following the first year of the agreement the tourism attraction project is not operating and open to the public on a regular and persistent basis.

(c) The agreement shall not be transferable or assignable by the approved company without the written consent of the Director of the Arkansas Economic Development Commission.

(d) If the approved company utilizes sales tax credits which are subsequently disallowed, then the approved company will be liable for the payment to the Director of the Department of Finance and Administration of all taxes resulting from the disallowance of the credits, plus applicable penalties and interest.

(e) The Director of the Arkansas Economic Development Commission shall provide a copy of each agreement entered into with an approved company to the Director of the Department of Finance and Administration.

History. Acts 1997, No. 291, § 6; 2001, No. 899, § 2; 2005, No. 2308, § 4; 2007, No. 827, § 136.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

“Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned

to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Develop-

ment may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 7, provided: "The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act."

Amendments. The 2005 amendment added (b)(2)(A)(i); substituted "The eligibility date shall be the date" for "A date certain" in (b)(2)(A)(ii); deleted "of the approved company" following "each calendar year" in (b)(3)(C); and made a stylistic change in (c).

The 2007 amendment rewrote (b)(3)(A)(ii).

15-11-507. Tourism attraction project sales tax credit.

(a) Upon receiving notification from the Director of the Arkansas Economic Development Commission that an approved company has entered into a tourism project agreement and is entitled to the sales tax credits provided by this subchapter, the Director of the Department of Finance and Administration shall provide the approved company with such forms and instructions as are necessary to claim those credits.

(b)(1)(A)(i)(a) An approved company shall be entitled to a credit if the company certifies to the Director of the Department of Finance and Administration that it has expended at least five hundred thousand dollars (\$500,000) in a high-unemployment county and one million dollars (\$1,000,000) in all other counties in approved costs and the Director of the Arkansas Economic Development Commission certifies that the approved company is in compliance with this subchapter.

(b)(1) The Director of the Department of Finance and Administration shall then issue a sales tax credit memorandum to the approved company equal to fifteen percent (15%) of the approved costs.

(2) However, in high-unemployment counties the Director of the Department of Finance and Administration shall issue a credit memorandum to the approved company equal to twenty-five percent (25%) of the approved costs.

(c) The sales tax credit memorandum shall not include an offset of the tourism tax levied under § 26-63-401 et seq.

(ii) Subsequent requests for credit for additional certified approved costs shall be filed with the Department of Finance and Administration during the term of the agreement.

(B)(i) The Director of the Department of Finance and Administration may require proof of expenditures.

(ii) Additional credit memoranda may be issued as the approved company certifies additional expenditures of approved costs.

(2)(A) No sales tax credit memorandum shall be issued for any approved costs expended after the expiration of two (2) years from the date the agreement was signed by the Director of the Arkansas Economic Development Commission and the approved company.

(B) However, the Director of the Arkansas Economic Development Commission, with the advice and consent of the Director of the Department of Finance and Administration, may authorize sales tax credits for approved costs expended up to four (4) years from the date the agreement was signed if the Director of the Arkansas Economic

Development Commission determines that the failure to complete the tourism attraction project within two (2) years resulted from:

(i) Unanticipated and unavoidable delay in the construction of the tourism attraction project;

(ii) The tourism attraction project, as originally planned, will require more than two (2) years to complete; or

(iii) A change in business ownership or business structure resulting from a merger or acquisition.

(c) The credit memorandum issued pursuant to subsection (b) of this section may be used to offset a portion of the reported state sales, or gross receipts, tax liability of the approved company for all sales tax reporting periods following the issuance of the credit memorandum, subject to the following limitations:

(1) Only increased state sales tax liability as defined in this subchapter may be offset by the issued credit;

(2)(A) An approved company whose agreement provides that it shall expend approved costs in excess of five hundred thousand dollars (\$500,000) in a high-unemployment county and one million dollars (\$1,000,000) in all other counties shall be entitled to use one hundred percent (100%) of the issued credit to offset increased state sales tax liability during the first year if its tax liability is equal to or greater than the amount issued in the state sales tax credit memorandum.

(B) Unused credits may be carried forward for a period of nine (9) years;

(3) All issued credit memoranda shall expire at the end of the month following the expiration of the agreement as provided in § 15-11-506; and

(4) Except as provided in § 15-11-511, credit memoranda shall not be used to offset any tax other than state sales tax.

(d) The approved company shall have no obligation to refund or otherwise return any amount of this credit to the person from whom the sales tax was collected.

(e) By April 1 of each year, the Director of the Department of Finance and Administration shall certify to the Director of the Arkansas Economic Development Commission the state sales tax liability of the approved companies receiving inducements under this section and the amount of state sales tax credits taken during the preceding calendar year.

(f)(1) The Director of the Department of Finance and Administration may promulgate administrative regulations as are necessary for the proper administration of this subchapter.

(2) The Director of the Department of Finance and Administration may also develop such forms and instructions as are necessary for an approved company to claim the sales tax credit provided by this subchapter.

(g)(1) The Director of the Department of Finance and Administration shall have the authority to obtain any information necessary from the approved company and the Arkansas Economic Development Commis-

sion to verify that approved companies have received the proper amounts of sales tax credits as authorized by this subchapter.

(2) The Director of the Department of Finance and Administration shall demand the repayment of any credits taken in excess of the credit allowed by this subchapter.

History. Acts 1997, No. 291, § 7; 1999, No. 1135, § 4; 1999, No. 1510, § 1; 2005, No. 1962, § 64; 2005, No. 2308, § 5; 2007, No. 182, § 13.

Amendments. The 2005 amendment by No. 1962 deleted (h).

The 2005 amendment by No. 2308, in (b)(1)(A)(i)(a), deleted “whose agreement provides that it shall expend approved costs of more than five hundred thousand dollars (\$500,000) but less than one million dollars (\$1,000,000)” following “An approved company” and inserted “in a high-unemployment county and one million dollars (\$1,000,000) in all other counties; added (b)(1)(A)(i)(b)(2) and (b)(1)(A)(i)(c); substituted “fifteen percent (15%)” for “ten percent (10%)” in (b)(1)(A)(i)(b)(1); redesignated former (b)(1)(A)(i)(b) as present (b)(1)(A)(ii); sub-

stituted “shall be filed ... of the agreement” for “in excess of five hundred thousand dollars (\$500,000) but less than one million dollars (\$1,000,000) shall result in a sales tax credit equal to ten percent (10%) of the approved costs” in present (b)(1)(A)(ii); redesignated former (b)(1)(C)(i) as present (b)(1)(B)(i); redesignated former (c)(2)(A)(i) and (ii) as present (c)(2)(A) and (B); in (c)(2)(A), inserted “five hundred thousand dollars (\$500,000) in a high-unemployment county and” and “in all other counties”; deleted former (c)(2)(B)(i) and (ii); and added (c)(4).

The 2007 amendment substituted “§ 26-63-401 et seq.” for “§ 26-52-1001 et seq.” in (b)(1)(A)(i)(c).

Effective Dates. Acts 2007, No. 182, § 32; Jan. 1, 2008.

15-11-508. Liberal construction.

This subchapter shall be construed liberally to effectuate the legislative intent, and the purpose of this subchapter is complete and independent authority for the performance of each and every act and thing authorized by this subchapter, and all powers granted by this subchapter shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers.

History. Acts 1997, No. 291, § 8.

15-11-509. Tourism attraction project income tax credit.

(a) Tourism attraction projects meeting the eligibility requirements under § 15-11-503(13)(A) are entitled to receive an income tax credit based upon a percentage of the payroll of the new full-time permanent employees working at the tourism attraction project.

(b) Upon notification from the Director of the Arkansas Economic Development Commission that an approved company has entered into a tourism attraction project agreement and is entitled to the income tax credit provided by this section, the Director of the Department of Finance and Administration shall provide the approved company with such forms and instructions as are necessary to claim those credits.

(c)(1) The approved company shall certify the number and payroll of the new full-time permanent employees to the Revenue Division of the Department of Finance and Administration.

(2) Upon certification by the company, the Department of Finance and Administration shall authorize an income tax credit equal to four percent (4%) of the payroll of the new full-time permanent employees of the approved tourism attraction project qualifying for benefits under this act.

(d) To be counted as a net new full-time permanent employee for the purpose of qualifying for the tax credits provided by this section, the employee in the position or job must have been an Arkansas taxpayer during the year in which the tax credits were earned.

(e) In the event it is found that any approved company receiving the benefits contained in this section has failed to comply with the conditions contained in this act, that company shall be disqualified from receiving any further benefits under this act and shall be liable for payment of such additional income taxes as may be due after the income tax credits provided for in this section are disallowed, plus interest.

(f) If the Department of Finance and Administration determines that an approved company is no longer qualified to participate in this act, it shall decertify the company. Any company so decertified shall not receive any benefits under this act.

(g) For projects receiving final approval after March 1, 1999, the credit may be applied against the approved company's income tax liability for the succeeding nine (9) years or until the credit is entirely used, whichever occurs first.

History. Acts 1999, No. 1135, § 5; 2001, No. 899, § 3; 2005, No. 2308, § 6.

Amendments. The 2005 amendment added (a); redesignated former (a) and (b) as present (b) and (c); deleted former (c); inserted "approved company shall ... employees to the" in (c)(1); in (c)(2), added "Upon certification by the company, the Department of Finance and Administration" and substituted "four percent (4%) ...

employees of the" for "one hundred (100) times the average hourly wage paid, with a maximum of three thousand dollars (\$3,000) per net new full-time permanent employee of an"; and, in (g), inserted "approved company's" and "liability."

Meaning of "this act". Acts 1999, No. 1135, codified as §§ 15-11-503—15-11-505, 15-11-507, 15-11-509, 15-11-510.

15-11-510. Special rules for certain lodging facilities.

(a) A lodging facility may qualify as a tourism attraction project, as defined in § 15-11-503, entitled to the benefits of this subchapter even though the lodging costs represent one hundred percent (100%) of the total project costs, provided the approved costs for the lodging facility exceed five million dollars (\$5,000,000), and:

(1) The lodging facility is attached to a convention center containing a minimum of seventy-five thousand square feet (75,000 sq. ft.); or

(2)(A) The lodging facility contains a minimum of twelve thousand square feet (12,000 sq. ft.) of meeting or exhibit space.

(B) The benefits provided by this subchapter shall not be available to a lodging facility with approved costs exceeding five million dollars (\$5,000,000) and containing a minimum of twelve thousand square

feet (12,000 sq. ft.) of meeting or exhibit space unless the Director of the Arkansas Economic Development Commission designates the lodging facility as an approved company and authorizes the undertaking of the tourism attraction project prior to April 1, 2011.

(b)(1) A lodging facility qualifying as a tourism attraction project under this section shall be entitled to the sales tax benefits as provided in § 15-11-507(b)(1)(A), provided that all other requirements of this subchapter regarding tourism attraction projects are satisfied.

(2) The sales tax credit shall be available only against the increased sales tax liability for the tourism attraction project.

History. Acts 1999, No. 1135, § 6; 2005, No. 2308, § 7; 2007, No. 1039, § 2; 2009, No. 672, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

“Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

Amendments. The 2005 amendment substituted “15-11-507(b)(1)(A)” for “15-11-507(b)(1)(B)” in (b)(1).

The 2007 amendment added (a)(2)(B).

The 2009 amendment substituted “April 1, 2011” for “April 1, 2009” in (a)(2)(B).

15-11-511. Special rules — Qualified amusement parks.

(a) As used in this section, “qualified amusement park” means a commercial recreational activity that:

(1) Operates at least three (3) consecutive months during a calendar year;

(2) Offers rides, shows, games, and other diversions;

(3) Otherwise qualifies as an approved company under § 15-11-503(2);

(4) Operates within a designated area of not less than one hundred (100) acres; and

(5) Has annual gross receipts from paid admissions of at least four million dollars (\$4,000,000) during a calendar year.

(b)(1) A qualified amusement park may claim the sales tax credit provided in § 15-11-507 against its liability for:

(A) Gross receipts tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.; and

(B) Tourism gross receipts tax levied under § 26-63-401 et seq.

(2) A qualified amusement park may not claim the sales tax credit against any other taxes collected by the state other than as provided in this section.

(3) An approved company other than a qualified amusement park may only claim the sales tax credit provided in § 15-11-507 against the gross receipts tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(4) The sales tax credit provided in this section to a qualified amusement park may be carried forward and used in the same manner as provided in § 15-11-507(c).

(c) A qualified amusement park entitled to any unused sales tax credits on March 1, 2005, may use the sales tax credits to offset its liability for:

(1) Gross receipts tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., for the remaining carry-forward period as provided in § 15-11-507(c) and calculated from the date of original issuance of the sales tax credit memorandum; and

(2)(A) Tourism gross receipts tax levied under § 26-63-401 et seq. for a period of ten (10) years beginning on March 1, 2005.

(B) At the end of the ten-year period, the qualified amusement park shall not be allowed to use any unused credits against tourism gross receipts tax levied under § 26-63-401 et seq.

(d)(1) Notwithstanding the other provisions of this subchapter, a qualified amusement park that on or after January 1, 2006, enters into an agreement that provides that the qualified amusement park shall expend approved costs of more than one million dollars (\$1,000,000) shall be entitled to a sales tax credit if the qualified amusement park certifies to the Director of the Department of Finance and Administration that it has expended at least one million dollars (\$1,000,000) in approved costs and the Director of the Arkansas Economic Development Commission certifies that the qualified amusement park is in compliance with this subchapter.

(2) The Director of the Department of Finance and Administration shall then issue a sales tax credit memorandum to the qualified amusement park equal to twenty-five percent (25%) of the approved costs. The sales tax credit memorandum may be used to offset the liability of the qualified amusement park for:

(A) Gross receipts tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.; and

(B) Tourism gross receipts tax levied under § 26-52-1001 et seq.

(3) The Director of the Department of Finance and Administration may require proof of expenditures.

(4) Additional credit memoranda may be issued as the qualified amusement park certifies additional expenditures of approved costs.

(5)(A) No sales tax credit memorandum shall be issued for any approved costs expended after the expiration of two (2) years from the date the agreement was signed by the Director of the Arkansas

Economic Development Commission and the qualified amusement park.

(B) However, the Director of the Department of Finance and Administration, with the advice and consent of the Director of the Arkansas Economic Development Commission, may authorize sales tax credits for approved costs expended up to four (4) years from the date the agreement was signed if the Director of the Arkansas Economic Development Commission determines that the failure to complete the tourism attraction project within two (2) years resulted from:

(i) Unanticipated and unavoidable delay in the construction of the tourism attraction project;

(ii) The tourism attraction project, as originally planned, will require more than two (2) years to complete; or

(iii) A change in business ownership or business structure resulting from a merger or an acquisition.

(6) The credit memorandum issued pursuant to subdivision (d)(2) of this section may be used to offset one hundred percent (100%) of the reported state tax liability as provided in subdivision (d)(2) of this section of the qualified amusement park for all sales tax reporting periods following the issuance of the credit memorandum, subject to the following limitations:

(A) Unused credits may be carried forward for a period of nine (9) years; and

(B) All issued credit memoranda shall expire at the end of the month following the expiration of the agreement as provided in § 15-11-506.

(7) The approved company shall have no obligation to refund or otherwise return any amount of this credit to the person from whom the sales tax was collected.

(8) By April 1 of each year, the Director of the Department of Finance and Administration shall certify to the Director of the Arkansas Economic Development Commission the state sales tax liability of the qualified amusement parks receiving inducements under this section and the amount of state sales tax credits taken during the preceding calendar year.

History. Acts 2005, No. 241, § 2; 2007, No. 182, § 14; 2007, No. 1039, §§ 3, 4.

A.C.R.C. Notes. Acts 2005, No. 241, § 1, provided: "Legislative intent.

"(a) The General Assembly finds that:

"(1) The State of Arkansas is well known as a vacation destination for tourists around the country and around the world;

"(2) The presence of amusement parks provides visitors to the State with an additional avenue of recreation to complement the State's natural, historic, scenic, and cultural attractions;

"(3) Amusement parks offer the state economic benefits, both in terms of increased tax revenue and employment opportunities for the citizens of this state;

"(4) As an economic incentive to attract amusement parks to the state, some amusement parks are permitted under current law to claim a state sales tax credit against certain approved costs incurred by companies in connection with tourism attraction projects; and

"(5) Otherwise qualified amusement projects are not currently allowed to use the credit to offset the tourism gross re-

ceipts tax levied under §§ 26-52-1001—26-52-1006.

“(b) As a further incentive to attract and keep qualified amusement parks and their obvious benefits in the State, it is the intent of the General Assembly to allow qualified amusement parks to also claim a credit against the tourism gross receipts tax to offset costs related to these tourism attraction projects.”

Acts 2007, No. 1602, § 1, provided:

“Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

Amendments. The 2007 amendment by No. 182 substituted “§ 26-63-401 et seq.” for “§ 26-52-1001 et seq.” in (b)(1)(B), (c)(2)(A), and (c)(2)(B).

The 2007 amendment by No. 1039 added (d).

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

Acts 2007, No. 1039, § 4: Section 3 of this act shall apply retroactively to July 1, 2006.

SUBCHAPTER 6 — KEEP ARKANSAS BEAUTIFUL COMMISSION

SECTION.

15-11-601. Creation — Membership.

15-11-602. Administration office — Director — Duties.

SECTION.

15-11-603. Powers and duties of commission.

15-11-604. Transfer of powers and duties.

15-11-601. Creation — Membership.

(a)(1) There is created the “Keep Arkansas Beautiful Commission”, to be composed of nine (9) members appointed by the Governor subject to confirmation by the Senate.

(2) Two (2) members shall be appointed from each Arkansas congressional district and the remaining member shall be appointed from the state at large.

(b)(1) The term of office of the initial members of the commission shall be determined by lot as follows:

(A) The term of office of two (2) of the initial members shall expire on January 14, 2003;

(B) The term of office of two (2) of the initial members shall expire on January 14, 2002;

(C) The term of office of two (2) of the initial members of the commission shall expire on January 14, 2001;

(D) The term of office of one (1) of the initial members of the commission shall expire on January 14, 2000;

(E) The term of office of one (1) of the initial members of the commission shall expire on January 14, 1999; and

(F) The term of office of one (1) of the initial members of the commission shall expire on January 14, 1998.

(2) All successor members, other than those appointed to fill unexpired terms, shall serve six-year terms to expire on January 14 of the sixth year.

(c) All vacancies shall be filled by appointment by the Governor and each appointment shall be subject to confirmation by the Senate.

(d)(1) The Governor shall designate the member to chair the organizational meeting of the commission, at which meeting the commission shall select from its membership a chair, a vice chair, and such other officers as it determines appropriate.

(2) The officers shall serve as such for such period of time as determined by the commission.

(e) Before entering upon his or her duties as a member of the commission, each member shall take and subscribe and file in the office of the Secretary of State an oath to support the Constitution of the United States and the Constitution of the State of Arkansas and to perform faithfully the duties of the office upon which he or she is about to enter.

(f) Members of the commission shall serve without compensation for their service but may receive expense reimbursement and a stipend of eighty-five dollars (\$85.00) per day in accordance with § 25-16-901 et seq.

(g) The Director of the Administrative Office of the Keep Arkansas Beautiful Commission shall serve as ex officio Secretary of the Keep Arkansas Beautiful Commission and shall have no vote on matters coming before the commission.

History. Acts 1997, No. 1278, § 1;
2001, No. 1650, § 7.

15-11-602. Administration office — Director — Duties.

(a) The Administrative Office of the Keep Arkansas Beautiful Commission shall be located within the Department of Parks and Tourism.

(b) The Director of the Administrative Office of the Keep Arkansas Beautiful Commission shall be appointed by and serve at the pleasure of the Director of the Department of Parks and Tourism.

(c) The Director of the Administrative Office of the Keep Arkansas Beautiful Commission shall develop and administer all programs and projects of the commission and perform such other duties which the Director of the Department of Parks and Tourism deems necessary and appropriate to foster and promote the awareness of all Arkansans as to the need to protect Arkansas' natural environment.

History. Acts 1997, No. 1278, § 2.

15-11-603. Powers and duties of commission.

The Keep Arkansas Beautiful Commission shall:

(1) Be an official agency of the State of Arkansas authorized to accept and receive grants, moneys, equipment, material, and services and real and personal property donated, bequeathed, or devised for any purposes relating to the programs of the commission and not expressly designated for any other agency and to disburse and utilize such moneys and property for the purposes of this subchapter;

(2) Implement a statewide litter prevention program through the voluntary action of local communities and state and local governmental agencies;

(3) Educate Arkansas' citizens and community leaders as to the problem of litter and the need for recycling the state's resources;

(4) Encourage litter prevention;

(5) Encourage beautification projects;

(6) Increase awareness of litter law enforcement;

(7) Promote consumer awareness of recycling benefits;

(8) Assist communities in establishing the Keep Arkansas Beautiful system;

(9) Encourage educational programs in schools and elsewhere that support the goals of the commission;

(10) Serve in an advisory capacity to the Director of the Administrative Office of the Keep Arkansas Beautiful Commission and the Director of the Department of Parks and Tourism; and

(11) Cooperate with and support existing recycling, beautification, and litter control programs in the state.

History. Acts 1997, No. 1278, § 3.

15-11-604. Transfer of powers and duties.

All powers, duties, functions, and responsibilities of the Keep Arkansas Beautiful Commission, created by Executive Order 89-4, are transferred to the Keep Arkansas Beautiful Commission created by this subchapter, and all similar commissions, whether created by law or executive order, are abolished.

History. Acts 1997, No. 1278, § 4.

SUBCHAPTER 7 — WILDLIFE OBSERVATION TRAILS PILOT PROGRAM

SECTION.

15-11-701. Title.

15-11-702. Findings.

15-11-703. Definition.

15-11-704. The Wildlife Observation Trails Pilot Program.

SECTION.

15-11-705. Wildlife Observation Trails — Development.

15-11-706. Wildlife Observation Trails Pilot Program Advisory Board — Created.

SECTION.

15-11-707. Funding.

15-11-708. Grant distribution.

SECTION.

15-11-709. Reporting.

15-11-701. Title.

This subchapter shall be known and may be cited as the “Wildlife Observation Trails Pilot Program”.

History. Acts 2009, No. 686, § 1.

15-11-702. Findings.

The General Assembly finds that:

(1) Arkansas is a state of natural cultural and scenic beauty, natural resources, and wildlife;

(2) Enjoyment of the natural cultural and scenic beauty, the natural resources, and the observation of wildlife in Arkansas is a favorite pastime of many;

(3) There will be a positive impact on the physical, intellectual, and emotional development of our youth through enhanced access to the state’s natural resources and wildlife by establishing wildlife observation trails in local communities;

(4) The potential for growth in the tourism sector of the economy through the development of trails is significant;

(5) The growth of the economy through the development of trails is “green growth” that is good for the environment;

(6) The development of trails is also good for encouraging and promoting a healthy lifestyle for our citizens;

(7) Wildlife observation trails rank high among the list of local amenities that an industry desires when it considers locating within the state;

(8) In permitted hunting and fishing areas of the state, the creation of wildlife observation trails can improve access to those activities; and

(9) The Department of Parks and Tourism and the Arkansas State Game and Fish Commission are interested in developing a Wildlife Observation Trails Pilot Program to ignite interest in the natural cultural and scenic beauty and natural resources of Arkansas and to promote economic development in a healthy and environmentally sound manner.

History. Acts 2009, No. 686, § 1.

15-11-703. Definition.

“Wildlife observation trail” means a trail route designed to promote conservation and management of wildlife resources of the state and to promote tourism and economic development through the enjoyment, use, protection, and improvement of the natural resources of Arkansas.

History. Acts 2009, No. 686, § 1.

15-11-704. The Wildlife Observation Trails Pilot Program.

(a) There is created a program to be known as the “Wildlife Observation Trails Pilot Program”.

(b) The program shall be developed, implemented, and administered by the Department of Parks and Tourism with the assistance of the Arkansas State Game and Fish Commission.

(c) The purpose of the program is to:

(1) Increase public awareness of the conservation of wildlife and other natural resources;

(2) Utilize the natural beauty, natural resources, and wildlife in the landscape of Arkansas in a positive, healthful manner;

(3) Attract tourism and the tourism industry through the enjoyment and utilization of the trails; and

(4) Promote harmonious interaction between communities and industry and the natural environment.

History. Acts 2009, No. 686, § 1.

15-11-705. Wildlife Observation Trails — Development.

(a) To accept a wildlife observation trail into the Wildlife Observation Trails Pilot Program and be eligible to receive grant moneys under this subchapter, the Department of Parks and Tourism shall require that the trail:

(1) meet the criteria established by the department after consultation with the Wildlife Observation Trails Pilot Program Advisory Board. The criteria includes without limitation:

(A) A right-of-way or easement for public use for a minimum period of ten (10) years;

(B) Trail operation and maintenance by a responsible organization for a minimum period of ten (10) years;

(C) Adherence to state trails standards and guidelines for the trail type designated;

(D) Location and design of the trail so that it is optimally attractive for wildlife observation;

(E) Readiness of the trail for public use; and

(F) Proper marking and signing;

(2) conform to goals established in the Statewide Comprehensive Outdoor Recreation Plan or the Arkansas Trails Plan; and

(3) promote tourism and economic development.

(b) When designating the grant recipients that are eligible for moneys under this subchapter, the department shall give more consideration to the location and design of a trail that:

(1) Is assessed to be a tourism attraction;

(2) Promotes economic development;

(3) Is designed to have particular appeal to youths for optimal wildlife observation; and

(4) Is designed to provide access for hunting or fishing activities.

History. Acts 2009, No. 686, § 1.

15-11-706. Wildlife Observation Trails Pilot Program Advisory Board — Created.

(a)(1) There is created an advisory body to the Department of Parks and Tourism to be known as the “Wildlife Observation Trails Pilot Program Advisory Board” to provide recommendations to the Director of the Department of Parks and Tourism and the Arkansas State Game and Fish Commission to develop criteria to establish and fund the development and maintenance of wildlife observation trails through the distribution of grant moneys under this subchapter.

(2) The board is a voluntary board that consists of seven (7) members that are appointed by the Director of the Department of Parks and Tourism as follows:

(A) One (1) representative of the Arkansas Economic Development Commission;

(B) One (1) representative of the Arkansas State Game and Fish Commission;

(C) One (1) representative of the Arkansas Recreation and Parks Association;

(D) One (1) representative of the Association of Arkansas Counties;

(E) One (1) representative of the Arkansas Game and Fish Foundation;

(F) One (1) representative of the Arkansas Audubon Society; and

(G) One (1) representative of the Arkansas Municipal League.

(b)(1) The Director of the Department of Parks and Tourism shall assist the board in establishing criteria consistent with § 15-11-705 by the promulgation of rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for recommendation of a grant for the development of a wildlife observation trail in the Wildlife Observation Trails Pilot Program.

(2) The Director of the Department of Parks and Tourism shall seek recommendations from the board for the selection of a grant recipient.

(c) To establish criteria to develop and maintain wildlife observation trails in wildlife management areas that are managed by the Arkansas State Game and Fish Commission, the Director of the Department of Parks and Tourism shall consult with the Director of the Arkansas State Game and Fish Commission.

History. Acts 2009, No. 686, § 1.

15-11-707. Funding.

(a)(1) The Arkansas State Game and Fish Commission agrees to make available one million dollars (\$1,000,000) for fiscal year 2009-2010 and one million dollars (\$1,000,000) for fiscal year 2010-2011 for the Wildlife Observation Trails Pilot Program for the development of wildlife observation trails under this subchapter from moneys that the

commission has received from oil and gas leases in the Fayetteville Shale.

(2) The General Assembly recognizes that the agreement under subdivision (a)(1) of this section does not constitute:

(A) A mandate by the General Assembly;

(B) An appropriation of funds by the General Assembly; or

(C) A waiver or relinquishment by commission of the authority vested in the commission under Arkansas Constitution, Amendment 35.

(3) Before moneys are distributed under this section, the commission shall retain the right to approve or disapprove the release of moneys.

(4) Future funding for the program is subject to the review under subdivisions (b)(2) and (3) of this section and shall be determined by and distributed from the availability of royalties from oil and gas leases in the Fayetteville Shale that the commission receives or from money from other sources.

(b)(1) The department and the commission agree to execute a memorandum of understanding to delineate each party's participation, obligation, and cooperation in the program sufficient to fulfill the requirements of this subchapter.

(2) The subdivision agree to review the memorandum of understanding under subdivision (b)(1) of this section every two (2) years to evaluate the effectiveness and success of the program and to reexamine the need for moneys to be made available to the grant recipients to fund the development and maintenance of wildlife observation trails.

(3) If both the commission and the department agree that the program meets or exceeds the purpose of the legislation or agree that to discontinue the program would result in an undue disruption of progress, then the parties shall reexecute a memorandum of understanding under subdivision (b)(1) of this section.

(c) An agreement for funding in a memorandum of understanding under subdivision (b)(1) of this section and a distribution of money under this section requires the final approval of the commission.

(d) The maximum grant amount for a single project funded under the program is one hundred thousand dollars (\$100,000) per year.

History. Acts 2009, No. 686, § 1.

15-11-708. Grant distribution.

(a)(1) A grant application under this subchapter that meets the criteria under § 15-11-705 shall be submitted to the Wildlife Observation Trails Pilot Program Advisory Board by the Director of the Department of Parks and Tourism for review and comment.

(2) The advisory board shall recommend grants for approval by the director.

(3) The director shall designate the grant recipients that are eligible for moneys under this subchapter and notify the Arkansas State Game and Fish Commission of the grant recipients.

(b) The commission agrees to receive grant designations submitted by the director and approve distribution of moneys annually to eligible grant recipients in the Wildlife Observation Trails Pilot Program as follows:

(1) A maximum of eighty percent (80%) of the moneys for grants for wildlife observation trail development to cities or counties; and

(2) A maximum of twenty percent (20%) of the moneys for grants for wildlife observation trail development to state agencies or nonprofit organizations.

History. Acts 2009, No. 686, § 1.

15-11-709. Reporting.

(a) The Arkansas State Game and Fish Commission and the Department of Parks and Tourism shall report the status of the Wildlife Observation Trails Pilot Program biannually to the Game and Fish/State Police Subcommittee of the Legislative Council and the Parks and Tourism Subcommittee of the Joint Budget Committee.

(b) The report shall address and evaluate whether or not the pilot program as provided in this subchapter has been successful in creating new wildlife observation trails and stimulating economic growth.

History. Acts 2009, No. 686, § 1.

CHAPTER 12

ARKANSAS NATURAL AND CULTURAL RESOURCES COUNCIL

SECTION.

15-12-101. Creation — Members — Meetings.

15-12-102. Administration of trust fund.

SECTION.

15-12-103. Disposition of revenues — Grants.

Cross References. Real property transfer tax, distribution to council, §§ 26-60-105, 26-60-112.

Effective Dates. Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1354, § 51; Apr. 14, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this

act affects the method of selection of alternate members of the Legislative Council and Legislative Joint Auditing Committee and that this act is immediately necessary for proper continuity and efficiency in State government. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of

its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-12-101. Creation — Members — Meetings.

(a) There is established the Arkansas Natural and Cultural Resources Council, which shall consist of eleven (11) voting members as follows:

- (1) The Director of the Department of Parks and Tourism;
- (2) The Director of the Department of Arkansas Heritage;
- (3) The Chair of the State Parks, Recreation, and Travel Commission or his or her designee;
- (4) The Chair of the Arkansas Natural Heritage Commission or his or her designee;

(5) The Commissioner of State Lands;

(6) Two (2) resident electors of this state as public members who are representatives of recreation groups, conservation groups, or other groups interested in the wise use, preservation, and conservation of Arkansas' natural or cultural resources;

(7) One (1) member to represent Arkansas cities and towns, to be named by the Governor from a list of three (3) names recommended to the Governor by the Arkansas Municipal League. This member shall serve a term of two (2) years or until his or her successor is appointed and qualified;

(8) One (1) member to represent Arkansas counties, who shall be appointed by the Governor from a list of three (3) names submitted to the Governor by the Arkansas County Judges Association. This member shall serve a term of two (2) years or until his or her successor is appointed and qualified;

(9) One (1) member appointed by the Speaker of the House of Representatives; and

(10) One (1) member appointed by the President Pro Tempore of the Senate.

(b) The appointments under subdivisions (a)(6)-(8) of this section shall be made by the Governor and, insofar as possible, shall be made from names recommended to the Governor by groups representative of those organizations.

(c)(1) One (1) member appointed under subdivision (a)(6) of this section shall represent rural areas and will be chosen from a list of names submitted to the Governor by the Arkansas Forestry Association.

(2) The other member appointed under subdivision (a)(6) of this section shall represent urban areas.

(d) Members appointed under subdivisions (a)(7) and (8) of this section shall serve for four-year terms.

(e) Members of the council shall serve without pay. However:

(1)(A) The Director of the Department of Parks and Tourism, the Director of the Department of Arkansas Heritage, the Chair of the State Parks, Recreation, and Travel Commission or his or her designee, and the Chair of the Arkansas Natural Heritage Commission or his or her designee may receive expense reimbursement for attending meetings of the council as provided by § 25-16-902.

(B) These allowances shall be paid from funds appropriated for the support of their respective agencies; and

(2)(A) The appointees to the council under subdivisions (a)(6)-(10) of this section, including the city and county representatives on the council, shall be entitled to reimbursement for reasonable and necessary expenses incurred for meals, lodging, and travel in attending council meetings.

(B) Expenses shall be paid from funds appropriated for the support of the Department of Arkansas Heritage.

(f) All action by the council shall be taken by the vote of a majority of the members of the council.

(g)(1) The council shall organize by choosing one (1) of its voting members to serve as Chair of the Arkansas Natural and Cultural Resources Council and shall elect such other officers as deemed necessary for the functioning of the council.

(2) The Director of the Department of Arkansas Heritage shall serve as Secretary of the Arkansas Natural and Cultural Resources Council and shall serve as disbursing officer of any funds appropriated for or administered by the council.

(h) The council shall meet on call of the chair or upon written request of not fewer than four (4) voting members or at such times as provided in rules adopted by the council.

History. Acts 1987, No. 729, §§ 1, 2; 1991, No. 786, § 15; 1997, No. 250, § 103; 1997, No. 1354, § 33; 1997, No. 1357, § 3; 2001, No. 1288, §§ 9, 10.

Publisher's Notes. Acts 1987, No. 729, § 1, provided, in part, that the Governor shall designate the terms of the two resident electors in order that the term of one member shall be for two years and the term of the other member shall be for four years.

Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts

passed at the regular session of the 78th General Assembly. All such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

Cross References. Compensation for members of interim committees and for performance of other interim duties, § 10-2-217.

15-12-102. Administration of trust fund.

The Arkansas Natural and Cultural Resources Council shall administer the Arkansas Natural and Cultural Resources Grants and Trust Fund established in this chapter and shall administer and approve all grants payable from the fund.

History. Acts 1987, No. 729, § 3.

and Cultural Resources Grants and Trust

Cross References. Arkansas Natural Fund, § 19-5-951.

15-12-103. Disposition of revenues — Grants.

(a) All revenues derived from the additional tax levied by § 26-60-105(b) shall be deposited by the Director of the Department of Finance and Administration in the State Treasury as special revenues.

(b) After deducting three percent (3%) of the revenues for distribution to the Constitutional Officers Fund and the State Central Services Fund to be used for the purposes as provided by law, the Treasurer of State shall credit the net amount thereof as follows:

(1)(A) Eighty percent (80%) of the net amount shall be credited to the Arkansas Natural and Cultural Resources Grants and Trust Fund, to be preserved and managed by the Arkansas Natural and Cultural Resources Council for use in the acquisition, management, and stewardship of state-owned lands or the preservation of state-owned historic sites, buildings, structures, or objects which the council determines to be of value for recreation or conservation purposes, with the properties to be used, preserved, and conserved for the benefit of this and future generations.

(B) It is not the intention of this chapter that the council shall itself manage, operate, or maintain any lands so acquired, but, rather, that it from time to time in its own discretion shall make grants to other agencies of the state authorized by law to acquire, manage, operate, and maintain the lands.

(C) The grants shall be made in such amounts, for such purposes, and to such agencies as the council in its discretion shall select.

(D) However, in choosing among competing purposes or expenditures, the council shall be guided by the principles set forth in the Arkansas Statewide Comprehensive Outdoor Recreation Plan as it may exist and be in force from time to time.

(E) In funding state park improvements, the council should initially emphasize the restoration or renovation of existing facilities and historic structures within the system.

(F) The council in its discretion shall have power either to allow moneys paid into the Natural and Cultural Resources Grants and Trust Fund to accumulate, with only the income thereon being spent, or to expend the whole or any part of the corpus or principal of the Natural and Cultural Resources Grants and Trust Fund.

(G) However, the council shall have power to do any and all things necessary to take advantage of federal or private funds donated or

obtainable through the use of the Natural and Cultural Resources Grants and Trust Fund.

(H) Without limiting the generality of the foregoing provisions of this section, the council shall have power to set aside any portion of the Natural and Cultural Resources Grants and Trust Fund into a separate and segregated account, the corpus or principal of which shall be inviolate, and only the income of which may be expended, to the extent necessary to comply with any federal law, regulation, or other requirement in connection with federal matching or grant moneys.

(I) As used in this section, the term “stewardship” shall include moneys necessary for the maintenance, preservation, operation, improvement, and management of state-owned lands acquired for recreational or conservational purposes and shall include such other stewardship purposes as may be authorized by the council;

(2) Ten percent (10%) of the net amount shall be distributed to the Parks and Tourism Fund Account, to be used by the Department of Parks and Tourism, on approval of the Parks, Recreation, and Tourism Grant Advisory Committee, for making grants for outdoor recreational purposes to cities and counties of this state in accordance with the plan; and

(3) Ten percent (10%) of the net amount shall be credited to a fund to be known as the “Natural and Cultural Resources Historic Preservation Trust Fund”, to be used by the council for providing a source of funds for the operation of the state historic preservation program and the “Main Street” program.

History. Acts 1987, No. 729, § 5.

CHAPTER 13

ARKANSAS ALTERNATIVE FUELS DEVELOPMENT ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PRODUCTION AND STANDARDS.
3. ARKANSAS ALTERNATIVE FUELS DEVELOPMENT PROGRAM.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 15-13-101. Title.
15-13-102. Definitions.

Effective Dates. Acts 2009, No. 977, § 5: Apr. 7, 2009. Emergency clause provided: “It is found and determined by the

General Assembly of the State of Arkansas that conventional fossil fuel supplies are constrained; that alternative energy

sources are needed to increase alternative energy supplies; and that this act is immediately necessary because the development of alternative fuels will mitigate price increases and assist this state's economic recovery. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety

shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-13-101. Title.

This chapter shall be known and may be cited as the "Arkansas Alternative Fuels Development Act".

History. Acts 2007, No. 699, § 1; 2007, No. 873, § 1.

15-13-102. Definitions.

As used in this chapter:

(1) "Alternative fuels" means biofuel, ethanol, compressed natural gas, or a synthetic transportation fuel;

(2) "Alternative fuels distributor" means a business located in the State of Arkansas that distributes alternative fuels or alternative fuels mixture;

(3) "Alternative fuels mixture" means a mixture of alternative fuels that is:

(A) An undyed, clear distillate special fuel that is suitable for use in motor vehicles on Arkansas highways;

(B) A dyed fuel for off-road use;

(C) Sold by the supplier producing alternative fuels mixture to any person for use as a fuel; or

(D) Used as a fuel by the supplier producing the alternative fuels mixture;

(4) "Alternative fuels producer" means a business located in Arkansas that uses biomass or other renewable resources excluding recycled petroleum oils to manufacture alternative fuels;

(5)(A) "Biofuel" means a renewable, biodegradable, combustible liquid fuel derived from biomass or other renewable resources that can be used as transportation fuel, combustion fuel, or refinery feedstock and that meets the American Society for Testing and Materials Specifications and Test Methods and federal quality requirements as in effect on February 1, 2007, for each category or grade of fuel.

(B) "Biofuel" includes without limitation:

(i) Biodiesel or renewable diesel;

(ii) Renewable gasoline;

(iii) Renewable jet fuel;

(iv) Renewable naphtha;

(v) Biocrude; and

(vi) Other renewable, biodegradable, mono alkyl ester combustible fuel derived from biomass;

(6)(A) "Biomass" means any matter derived from plants or animals that is used for the production of alternative fuels.

(B) "Biomass" includes residues or byproducts from:

(i) Agricultural production;

(ii) Agricultural processing;

(iii) Algae;

(iv) Forest or wood resources;

(v) Forestry or wood production; or

(vi) Forestry or wood processing.

(C) "Biomass" includes plant material from crops that are produced for use in the production of alternative fuels and cellulosic biomass.

(D) "Biomass" does not include recycled petroleum oil;

(7) "Ethanol" means ethyl alcohol derived from biomass that:

(A) Meets the American Society for Testing and Materials Specification D4806-04a for ethanol as in effect on January 1, 2007; and

(B) Is denatured as specified in 27 C.F.R. Part 20 and Part 21, as in effect on January 1, 2007;

(8) "Feedstock processor" means a business located in Arkansas that uses biomass or other renewable resources excluding recycled petroleum oils to manufacture feedstock to be used in the production of alternative fuels;

(9) "Other renewable resources" means any material that can be recycled, regenerated, reclaimed, or reused;

(10) "State agency" means any office, board, commission, department, council, bureau, or other entity created by the General Assembly; and

(11) "Synthetic transportation fuel" means a liquid fuel produced from biomass by a gasification process or other refining process that meets any applicable state or federal environmental requirement.

History. Acts 2007, No. 699, § 1; 2007, No. 873, § 1; 2009, No. 977, § 1.

Amendments. The 2009 amendment added "compressed natural gas, or a synthetic transportation fuel" in (1); [redesignated (2) as (3) and remaining subdivisions

accordingly, resulting in no (2)]; inserted present (7)(A)(iii) and redesignated remaining subdivisions accordingly; added (12); and made related changes.

SUBCHAPTER 2 — PRODUCTION AND STANDARDS

SECTION.

15-13-201. Alternative fuels production goal.

15-13-202. Biofuel standard for state vehicles and state equipment.

SECTION.

15-13-203. Allowances for variance of the biofuel standard.

15-13-204. Quality determinations and testing.

15-13-205. Rules.

15-13-201. Alternative fuels production goal.

The per annum goal for alternative fuels production at production facilities in the state is fifty million gallons (50,000,000 gal.) by October 1, 2008.

History. Acts 2007, No. 699, § 1.

15-13-202. Biofuel standard for state vehicles and state equipment.

Beginning on January 1, 2009, all diesel-powered motor vehicles, light trucks, and equipment owned or leased by a state agency shall be operated using diesel fuel that contains a minimum of two percent (2%) biofuel by volume.

History. Acts 2007, No. 699, § 1.

15-13-203. Allowances for variance of the biofuel standard.

The Director of the Department of Finance and Administration may grant a waiver for a variance from the biofuel standard under § 15-13-202 if the applicant demonstrates one (1) or more of the following:

(1) The cost of diesel fuel that is blended with biofuel exceeds the cost of diesel that does not contain biofuel by fifteen cents (15¢) per gallon or more;

(2) Diesel fuel blended with biofuel is not available for purchase in the geographic region; or

(3) Compliance with the biofuel standard is not economically feasible.

History. Acts 2007, No. 699, § 1.

15-13-204. Quality determinations and testing.

(a) The Arkansas Bureau of Standards of the State Plant Board shall make the determination that alternative fuels used in this state:

(1) Are useable in motor vehicles;

(2) Meet the specifications for biofuel and ethanol as provided under § 15-13-102; and

(3) Undergo quality assurance testing to ensure fuel quality and continued consumer confidence in alternative fuels.

(b) The Director of the Arkansas Bureau of Standards may:

(1) Establish a fuel testing laboratory;

(2) Contract with a laboratory for testing;

(3) Adopt rules on false and misleading advertising, labeling, and posting of prices; and

(4) Adopt the standards for alternative fuels.

History. Acts 2007, No. 699, § 1.

15-13-205. Rules.

The Director of the Department of Finance and Administration shall promulgate rules and regulations to provide for the administration of this subchapter.

History. Acts 2007, No. 699, § 1.

SUBCHAPTER 3 — ARKANSAS ALTERNATIVE FUELS DEVELOPMENT PROGRAM

SECTION.

15-13-301. Arkansas Alternative Fuels Development Program.

15-13-302. Production incentives for alternative fuels producers.

15-13-303. Production incentives for feedstock processors.

SECTION.

15-13-304. Distribution incentives for alternative fuels distributors.

15-13-305. Rules.

Effective Dates. Acts 2009, No. 977, § 5: Apr. 7, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that conventional fossil fuel supplies are constrained; that alternative energy sources are needed to increase alternative energy supplies; and that this act is immediately necessary because the development of alternative fuels will mitigate price increases and assist this state's economic recovery. Therefore, an emergency

is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-13-301. Arkansas Alternative Fuels Development Program.

(a) The Arkansas Alternative Fuels Development Program is established and shall be developed and administered by the Arkansas Agriculture Department.

(b) The program shall include three (3) types of grant incentives:

(1) Capital and operation production incentives for alternative fuels producers;

(2) Production incentives for feedstock processors; and

(3) Distribution incentives for alternative fuels distributors.

(c) The grant incentives under this subchapter are available only for the following after January 1, 2007:

(1) Capital investments in alternative fuels production facilities, feedstock processing facilities, or distribution facilities;

(2) The production of alternative fuels; or

(3) The processing of feedstock.

History. Acts 2007, No. 873, § 1.

15-13-302. Production incentives for alternative fuels producers.

(a) The Arkansas Alternative Fuels Development Program shall include a grant incentive program for alternative fuels producers based on the gallonage production of alternative fuels as provided in this section.

(b) The program shall include grants for:

(1) Capital improvements made after January 1, 2007, for the construction, modification, alteration, or retrofitting of an alternative fuels production facility located and operated in Arkansas; and

(2) Operations costs after January 1, 2007, for the operation of an alternative fuels production facility located and operated in Arkansas.

(c) The Arkansas Agriculture Department shall create a grant application process for alternative fuels producers for capital improvements that includes:

(1) An application for a grant under this subsection (c) that shall include at a minimum:

(A) The expected gallonage production of alternative fuels at the facility;

(B) A narrative description of the intended use of the grant moneys; and

(C) Evidence sufficient to satisfy the department that the applicant has the capacity to complete the proposed project;

(2) Instructions about the grant process;

(3) Scoring procedures to determine the award of the grants; and

(4) Other factors that the Secretary of the Arkansas Agriculture Department deems necessary.

(d) The department shall create a grant application process for alternative fuels producers for operations costs that includes:

(1) An application for a grant under this subsection (d) shall include at a minimum:

(A) The expected gallonage production of alternative fuels at the facility; and

(B) Evidence sufficient to satisfy the department that the applicant has the capacity to operate during the applicable grant period;

(2) Instructions about the grant process;

(3) Scoring procedures to determine the award of the grants; and

(4) Other factors that the secretary deems necessary.

(e)(1) The department shall prepare an annual progress report on grant assistance made under this section.

(2) The report shall include:

(A) The amount of each grant;

(B) The purpose of each grant;

(C) How grant funds were expended by the grant recipient;

(D) The results produced or the progress made;

(E) The revenues produced;

(F) Tonnages of feedstock materials used; and

(G) The gallonage of alternative fuels produced.

(3) The report for each state fiscal year shall be filed by June 30 of the following fiscal year with the office of the Governor and the Legislative Council.

(f)(1) The secretary shall make cash payments to an alternative fuels producer that qualifies as a grant recipient under this section in an amount not to exceed twenty cents (20¢) per gallon of alternative fuels produced.

(2) The payment to an alternative fuels producer under this section shall be for the annual production of alternative fuels.

(g)(1) The department shall not award a grant in an amount that exceeds two million dollars (\$2,000,000) to any one (1) alternative fuels producer in any one (1) fiscal year.

(2) An entity that holds a controlling interest in more than one (1) alternative fuels production facility is considered one (1) alternative fuels producer under this section.

(h) Nothing in this section shall limit a grant recipient under this section from applying for or receiving a production incentive for feedstock processors under § 15-13-303.

History. Acts 2007, No. 873, § 1.

15-13-303. Production incentives for feedstock processors.

(a) The Arkansas Alternative Fuels Development Program shall include a grant incentive program that provides grants to feedstock processors to assist in the construction, modification, alteration, or retrofitting of feedstock processing facilities that are located and operated in Arkansas.

(b) The Arkansas Agriculture Department shall create a grant application process for feedstock processors that shall include:

(1) An application for a grant under this subchapter that shall include at a minimum:

(A) A narrative description of the intended use of the grant moneys; and

(B) Evidence sufficient to satisfy the department that the applicant has the capacity to complete the proposed project;

(2) Instructions about the grant process;

(3) Scoring procedures to determine the award of the grants; and

(4) Other factors that the Secretary of the Arkansas Agriculture Department deems necessary.

(c)(1) The department shall prepare an annual progress report on grant assistance made under this section.

(2) The report shall include:

(A) The amount of each grant;

(B) The purpose of each grant;

(C) How grant funds were expended by the grant recipient; and

(D) The origin and tonnage of the feedstock that was processed.

(3) The report for each state fiscal year shall be filed by June 30 of the following fiscal year with the office of the Governor and the Legislative Council.

(d)(1) The department shall not award a grant in an amount that exceeds three million dollars (\$3,000,000) or fifty percent (50%) of the project cost, whichever is less, to any one (1) feedstock processor in any one (1) fiscal year.

(2) An entity that holds a controlling interest in more than one (1) feedstock processing plant is considered one (1) feedstock processor under this section.

(e) Nothing in this section shall limit a grant recipient under this section from applying for or receiving a production incentive for alternative fuels producers under § 15-13-302.

History. Acts 2007, No. 873, § 1; 2009, No. 977, § 2. (\$3,000,000) or fifty percent (50%) of the project cost, whichever is less” for “two

Amendments. The 2009 amendment substituted “three million dollars million dollars (\$2,000,000)” in (d)(1).

15-13-304. Distribution incentives for alternative fuels distributors.

(a) The Arkansas Alternative Fuels Development Program shall include a grant incentive program that provides grants to alternative fuels distributors to assist the alternative fuels distributors with the storage and distribution of the alternative fuels or alternative fuels mixture at distribution facilities that are located and operated in Arkansas.

(b) The Arkansas Agriculture Department shall create a grant application process for alternative fuels distributors that shall include:

(1) An application for a grant under this subchapter that shall include at a minimum:

(A) A narrative description of the intended use of the grant moneys; and

(B) Evidence sufficient to satisfy the department that the provision of a grant to the alternative fuels distributor will improve the statewide supply and distribution of alternative fuels and alternative fuels mixtures that are produced in Arkansas;

(2) Instructions about the grant process;

(3) Scoring procedures to determine the award of the grants; and

(4) Other factors that the Secretary of the Arkansas Agriculture Department deems necessary.

(c)(1) The department shall prepare an annual progress report on grant assistance made under this section.

(2) The report shall include:

(A) The amount of each grant;

(B) The purpose of each grant;

(C) How grant funds were expended by the grant recipient;

(D) The results produced or the progress made in the overall distribution of alternative fuels or alternative fuels mixtures state-wide;

(E) The revenues produced; and

(F) Tonnages of materials stored and distributed.

(3) The report for each state fiscal year shall be filed by June 30 of the following fiscal year with the office of the Governor and the Legislative Council.

(d) The department shall not award a grant in an amount that exceeds three hundred thousand dollars (\$300,000) or fifty percent (50%) of the project cost, whichever is less, to any one (1) alternative fuels distributor at each alternative fuels distributor site in any one (1) fiscal year.

History. Acts 2007, No. 873, § 1; 2009, No. 977, § 3. lars (\$300,000) or fifty percent (50%) of the project cost, whichever is less” for “fifty thousand dollars (\$50,000)” in (d).

Amendments. The 2009 amendment substituted “three hundred thousand dol-

15-13-305. Rules.

After consulting the Arkansas Energy Office, the Arkansas Agriculture Department shall promulgate rules to implement and administer this subchapter.

History. Acts 2007, No. 873, § 1; 2009, No. 977, § 4. added “After consulting the Arkansas Energy Office.”

Amendments. The 2009 amendment

CHAPTER 14

ARKANSAS RETIREMENT COMMUNITY PROGRAM ACT

SECTION.

- 15-14-101. Title.
- 15-14-102. Definitions.
- 15-14-103. Arkansas Retirement Community Program — Creation.
- 15-14-104. Eligibility.

SECTION.

- 15-14-105. Services provided.
- 15-14-106. Recertification.
- 15-14-107. Arkansas Retirement Community Program Fund Account.
- 15-14-108. Rules and regulations.

15-14-101. Title.

This chapter shall be known and may be cited as the “Arkansas Retirement Community Program Act”.

History. Acts 2007, No. 808, § 1.

15-14-102. Definitions.

As used in this chapter:

(1) “Commission” means the Arkansas Economic Development Commission; and

(2) "Program" means the Arkansas Retirement Community Program.

History. Acts 2007, No. 808, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

"Department of Economic Development renamed Arkansas Economic Development Commission.

"(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

"(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other neces-

sary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

"(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 7, provided: "The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act."

15-14-103. Arkansas Retirement Community Program — Creation.

(a) The Arkansas Economic Development Commission shall establish and maintain an Arkansas Retirement Community Program under which retirees and potential retirees are encouraged to make their homes in Arkansas communities that have met the criteria for certification by the commission as an Arkansas retirement community.

(b) The mission of the program is to:

(1) Promote Arkansas as a retirement destination to retirees and potential retirees both inside and outside Arkansas;

(2) Assist Arkansas communities in their efforts to market themselves as desirable retirement locations and to develop communities that retirees would find attractive for a retirement lifestyle;

(3) Assist in the development of retirement communities for economic development purposes and as a means of providing a potential workforce and enriching Arkansas communities; and

(4) Encourage tourism to Arkansas.

History. Acts 2007, No. 808, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

"Department of Economic Development renamed Arkansas Economic Development Commission.

"(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

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“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Develop-

ment may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

15-14-104. Eligibility.

(a) To be eligible to be an Arkansas retirement community, an applicant community, acting through a board or panel that serves as the applicant community's official program sponsor, shall:

(1) Complete a retiree desirability assessment, as developed by the Arkansas Economic Development Commission, to include facts regarding crime statistics, tax information, recreational opportunities, housing availability, and other appropriate factors, including criteria listed in subsection (b) of this section;

(2) Work to gain the support of churches, clubs, businesses, media, and other entities as necessary for the success of the Arkansas Retirement Community Program in the applicant community;

(3) Identify emergency medical services and hospitals within a seventy-five-mile radius of the community; and

(4) Submit to the commission:

(A) An application fee in an amount equal to the greater of:

(i) Five thousand dollars (\$5,000); or

(ii) Twenty-five cents (25¢) multiplied by the population of the applicant community, as determined by the most recent federal decennial census;

(B) A marketing plan detailing the mission as applied to the applicant community, the target market, the competition, an analysis of the applicant community's strengths, weaknesses, opportunities, and dangers and the strategies the applicant community will employ to attain the goals of the program; and

(C) A long-term plan outlining the steps the applicant community will undertake to maintain its desirability as a destination for retirees, including an outline of plans to correct any facility and service deficiencies identified in the retiree desirability assessment required by subdivision (a)(1) of this section.

(b) The commission shall develop and use a scoring system to determine whether an applicant community will qualify as an Arkansas retirement community. In addition to the requirements of subsection (a) of this section, the commission shall consider as part of the scoring system the applicant community in relation to the following criteria:

(1) Arkansas's state and local tax structure;

(2) Housing opportunities and cost;

(3) Climate;

- (4) Personal safety;
- (5) Working opportunities;
- (6) Health care services and other services along the continuum of care, including home-based services and community-based services, housing for the elderly, assisted living, personal care, and nursing care facilities;
- (7) Transportation;
- (8) Continuing education;
- (9) Leisure living;
- (10) Recreation;
- (11) Performing arts;
- (12) Festivals and events;
- (13) Sports at all levels; and
- (14) Other services and facilities in the applicant community that are necessary to enable persons to age in the least restrictive environment, as may be identified by the Department of Human Services.

History. Acts 2007, No. 808, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

“Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other neces-

sary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

15-14-105. Services provided.

(a) If the Arkansas Economic Development Commission finds that an applicant community successfully meets the requirements of an Arkansas retirement community, not later than ninety (90) days after the application is submitted, the commission shall certify the community and provide the following services to the community:

- (1) Assistance in the training of local staff and volunteers;
- (2) Ongoing oversight and guidance in marketing, including updates on retirement trends;
- (3) Inclusion in the state’s national advertising and public relations campaigns and travel show promotions, including a prominent feature on the commission’s Internet website, to be coordinated with the Internet websites of other agencies, as appropriate;

(4) Eligibility for state financial assistance for brochures, support material, and advertising; and

(5) An evaluation and progress assessment on maintaining and improving the community's desirability as a home for retirees.

(b) The commission may contract with a local or regional nonprofit organization to provide a service described by subsection (a) of this section.

History. Acts 2007, No. 808, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

"Department of Economic Development renamed Arkansas Economic Development Commission.

"(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

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"(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other neces-

sary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

"(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 7, provided: "The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act."

15-14-106. Recertification.

An Arkansas retirement community's certification under § 15-14-105 expires on the fifth anniversary of the date the initial certification is issued. To be considered for recertification by the Arkansas Economic Development Commission, an Arkansas retirement community must:

(1) Complete and submit a new application in accordance with the requirements of § 15-14-104(a); and

(2) Submit data demonstrating the success or failure of the Arkansas retirement community's efforts to market and promote itself as a desirable location for retirees and potential retirees.

History. Acts 2007, No. 808, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

"Department of Economic Development renamed Arkansas Economic Development Commission.

"(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned

to the Department of Economic Development.

"(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

"(c) Appropriations authorized for the

personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 7, provided: "The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act."

15-14-107. Arkansas Retirement Community Program Fund Account.

The Arkansas Retirement Community Program Fund Account is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State and shall be funded by the fees collected under § 15-14-104. All moneys collected under the fund account shall be deposited into the State Treasury to the credit of the fund account as special revenues. Moneys in the account may be appropriated to the Arkansas Economic Development Commission only for the purposes of this chapter, including the payment of administrative and personnel costs of the commission associated with administering the Arkansas Retirement Community Program.

History. Acts 2007, No. 808, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

"Department of Economic Development renamed Arkansas Economic Development Commission.

"(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

"(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other neces-

sary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

"(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 7, provided: "The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act."

15-14-108. Rules and regulations.

The Arkansas Economic Development Commission shall promulgate rules and regulations to implement this chapter.

History. Acts 2007, No. 808, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided:

"Department of Economic Development renamed Arkansas Economic Development Commission.

"(a)(1) The Department of Economic Development, as it is referred to or em-

powered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the

personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

CHAPTERS 15-19

[Reserved]

SUBTITLE 2. LAND AND WATER RESOURCES GENERALLY

CHAPTER 20 GENERAL PROVISIONS

SUBCHAPTER

1. GENERAL PROVISIONS.
2. ARKANSAS NATURAL RESOURCES COMMISSION.
3. ARKANSAS ENVIRONMENTAL QUALITY ACT OF 1973.
4. CONSERVATION EASEMENT ACT.
5. ARKANSAS NATURAL AREAS PROTECTION ACT.
6. ARKANSAS CAVE RESOURCES PROTECTION ACT.
7. ARKANSAS SCENIC RESOURCES ACT OF 1991.
8. ARKANSAS SOIL AND WATER CONSERVATION COMMISSION POOLED LOAN SECURITIZATION ACT OF 1995.
9. ARKANSAS POULTRY FEEDING OPERATIONS REGISTRATION ACT.
10. ARKANSAS SOIL NUTRIENT MANAGEMENT PLANNER AND APPLICATOR CERTIFICATION ACT.
11. ARKANSAS SOIL NUTRIENT APPLICATION AND POULTRY LITTER UTILIZATION ACT.
12. SURPLUS NUTRIENT REMOVAL INCENTIVES ACT.
13. ARKANSAS WATER, WASTE DISPOSAL, AND POLLUTION ABATEMENT FACILITIES FINANCING ACT OF 2007.

RESEARCH REFERENCES

C.J.S. 39A C.J.S., Health & Env., § 125
et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

15-20-101. Complaints.

15-20-101. Complaints.

(a) A person who provides information to the Arkansas Natural Resources Commission concerning a possible violation of the Arkansas Poultry Feeding Operations Registration Act, § 15-20-901 et seq., the Arkansas Soil Nutrient Management Planner and Applicator Certification Act, § 15-20-1001 et seq., or the Arkansas Soil Nutrient Application and Poultry Litter Utilization Act, § 15-20-1101 et seq., shall provide:

(1) A written complaint to the commission; and

(2) His or her:

(A) Legal name; and

(B) Current mailing and physical address at which the complainant may be contacted.

(b) The complaint shall be verified by the notarized signature of the complainant.

(c) All complaints provided under this section shall be open to public inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 2005, No. 1871, § 6.

SUBCHAPTER 2 — ARKANSAS NATURAL RESOURCES COMMISSION**SECTION.**

- 15-20-201. Creation.
- 15-20-202. Members.
- 15-20-203. Offices — Seal.
- 15-20-204. Organization.
- 15-20-205. Executive director.
- 15-20-206. Rules and regulations — Meetings — Oaths, subpoenas, etc. — Judicial review.

SECTION.

- 15-20-207. Powers and duties.
- 15-20-208. Failure to repay loan or fee — Certification of deficiency.
- 15-20-209. Fee assessment for cost recovery.
- 15-20-210. Underground aquifers.

A.C.R.C. Notes. References to “this subchapter” in §§ 15-20-201 — 15-20-208 may not apply to §§ 15-20-209 and 15-20-210 which were enacted subsequently.

Acts 1995, No. 1265, §§ 1-10, as amended by Acts 1997, No. 324, §§ 4, 5, and No. 385, § 5, provided: “SECTION 1. The General Assembly has determined that the duties performed and the programs administered by the Arkansas Geological Commission are closely related to those of the Arkansas Soil and Water Conservation Commission.

“SECTION 2. It is the purpose of this act to authorize the Arkansas Geological Commission at its June, 1995 meeting to, by a majority vote of its membership,

enter into a voluntary merger of any or all of its programs or divisions with the Arkansas Soil and Water Conservation Commission. If the Geological Commission votes to merge any or all of its programs or divisions with the Soil and Water Conservation Commission it is further the purpose of this act that the transfer be accomplished in an expeditious, orderly and efficient manner.

“SECTION 3. (a) The merger vote shall occur at the June, 1995 meeting of the Arkansas Geological Commission and prior to that time both the Arkansas Geological Commission and the Arkansas Soil and Water Conservation Commission shall hold joint public hearings and solicit

input concerning the synergies and benefits possible by the proposed merger. The Soil and Water Conservation Commission shall provide input to the Geological Commission prior to its June meeting on the Soil and Water Conservation Commission's position on the merger.

"(b) If the Geological Commission votes against the merger of any or all of its programs or divisions it shall conduct a quality management review of the programs of the Geological Commission and specifically review the location, cost and equality of the Arkansas Geology Museum and determine whether it is in the best interest of the state for the museum to remain a stand alone entity or merge with the Museum of Natural Science and History or other museum. The Geological Commission is authorized to transfer the museum and all of its duties, powers, functions, actions, assets, properties and appropriations at any time. If the Geological Commission votes to merge any or all of its programs or divisions with the Soil and Water Conservation Commission, the quality management review shall be conducted by the Soil and Water Conservation Commission on such programs or divisions. A report of the results of the quality management review shall be prepared and filed no later than July 1, 1996 with the Governor, the House and Senate Interim Committees on State Agencies and Governmental Affairs and the House and Senate Interim Committees on City, County and Local Affairs.

"SECTION 4. Both the Arkansas Geological Commission and the Soil and Water Conservation Commission shall also prepare and file no later than July 1, 1996 a report to the Governor, the House and Senate Interim Committees on State Agencies and Governmental Affairs, and the House and Senate Interim Committees on City, County, and Local Affairs regarding the benefits of the merger in the future.

"SECTION 5. In determining whether to voluntarily merge with the Arkansas Soil and Water Conservation Commission, the Arkansas Geological Commission shall take into consideration the best interest of the state and the furtherance of the obligations of the commission.

"SECTION 6. Upon a majority vote of the membership of the Arkansas Geological Commission to merge with the Arkan-

sas Soil and Water Conservation Commission, the Arkansas Geological Commission is abolished effective July 1, 1995, and its functions, powers, duties, assets, properties and appropriations are transferred by a Type 3 transfer, as defined in Ark. Code Ann. § 25-2-106, to the Arkansas Soil and Water Conservation Commission.

"If the Geological Commission votes to transfer a portion of its programs or divisions to the Soil and Water Conservation Commission then those programs or divisions will be abolished effective July 1, 1995 and their powers, functions, duties, assets, properties and appropriations are transferred by a Type 3 transfer as defined in Ark. Code 25-2-106 to the Arkansas Soil and Water Conservation Commission.

"SECTION 7. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

"SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

"SECTION 9. All laws and parts of laws in conflict with this act are hereby repealed.

"SECTION 10. EMERGENCY. It is hereby found and determined by the General Assembly that the provisions of the act are of critical importance to preserve the efficient operation of programs that deliver services to the citizens of the State of Arkansas; and that this act is necessary for the efficient and economic operation of state government. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after passage and approval."

The merger of the Arkansas Geological Commission and the Arkansas Soil and Water Conservation Commission did not occur, and the Arkansas Geological Commission was not abolished on July 1, 1995.

Acts 2005, No. 1427, § 2, provided: "DEMONSTRATION PROJECT PLAN

AND TEST PROTOCOLS. The Arkansas Soil and Water Conservation Commission shall be responsible for and shall develop the Final Demonstration Project Plan and Test Protocols, identify participating agencies, organizations and companies, assigning responsibilities, and establishing schedules for Demonstration Project implementation. Those counties most affected should be given priority in identifying participants for the Demonstration Project. The provisions of this section shall be in effect only from July 1, 2005 through June 30, 2007."

Preambles. Acts 1969, No. 217 contained a preamble which read: "Whereas, the State of Arkansas is in urgent need of an updated, comprehensive water and related lands management program for the protection of the public interest of the entire state with respect to its water resources, including boundary waters; and

"Whereas, local areas within the state are in need of additional water resource development essential to their continued economic development; and

"Whereas, federally financed water projects are dependent upon state and local participation...."

Effective Dates. Acts 1963, No. 14, § 18: Feb. 8, 1963. Emergency clause provided: "It has been found that notwithstanding the fact that the Commission will not have the functions performable by it hereunder until April 1, 1963, it is necessary that immediate action be taken by the Governor to appoint, and by the Senate to confirm the appointment of, the members of the Commission in order that the Commission may organize and begin to prepare its plan of operations so that there may be no disruption of service on and after that date, and that only by the immediate operation of this act may such condition be obviated. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1983, No. 184, § 3: Feb. 15, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Soil and Water Conservation Commission is now limited to fifteen dollars (\$15.00) per diem and seven (7) cents per mile for travel reimbursement; that such is inadequate, and that this Act

is immediately necessary to grant the members of the Soil and Water Conservation Commission the same reimbursement for expenses as provided for State employees. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, Nos. 657 and 942, § 7: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that additional funding is necessary to maintain the efficient delivery of services provided by the Soil and Water Conservation Commission and further delay in providing for additional funding may work irreparable harm on the commission's ability to provide its services. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 688, § 5: Mar. 21, 1995. Emergency clause provided: "It has been found and determined by the General Assembly of Arkansas that additional authority is needed for the Arkansas Soil and Water Conservation Commission to more efficiently utilize funds for water resources development and waste disposal and pollution abatement thereby reducing the cost to the State of Arkansas and allowing the commission's borrowers to acquire and construct projects in a more efficient manner. For these reasons, it is hereby declared necessary for the preservation of the public peace, health, and safety that this Act become effective without delay. It is, therefore, declared that an emergency exists, and this Act shall take effect on the date of its passage and approval."

Acts 1997, No. 237, § 6: Feb. 21, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Sparta Aquifer is being depleted and damaged by salt water intrusion; that the preservation and protection of the aquifer can best be accomplished through an interstate compact; that the compact should be entered into between the Soil and Water Conservation Commission of Arkansas and agencies of other states; that the Commission does

not now have that authority and should be given that authority as soon as possible in order to begin the process of negotiating the interstate compact as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards

and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Cross References. Water conservation, § 15-22-201 et seq.

15-20-201. Creation.

There is created and established at the seat of government of this state a commission to be known as the "Arkansas Natural Resources Commission", hereinafter also referred to as the "commission".

History. Acts 1963, No. 14, § 1; A.S.A. 1947, § 9-118; Acts 2005, No. 1243, § 3.

A.C.R.C. Notes. Acts 2005, No. 1243, § 1, provided: "Legislative intent.

"(a) Since the Arkansas Soil and Water Conservation Commission was created by Acts 1963, No. 14 the responsibilities of the commission have grown to include water planning, groundwater protection, floodplain management, nonpoint source pollution management, wetlands restoration, and financing of drinking water and sewer infrastructure as well as the financing of water treatment and collection facilities.

"(b) The commission would more aptly be characterized by a name that describes the commission's mission to protect natural resources for the health, safety, and economic benefit of the state."

Acts 2005, No. 1243, § 2, provided: "Arkansas Soil and Water Conservation Commission renamed 'Arkansas Natural Resources Commission'.

"(1) The "Arkansas Soil and Water Conservation Commission" as it is referred to

or empowered throughout the Arkansas Code, is renamed.

"(2) In its place, the "Arkansas Natural Resources Commission" is established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Soil and Water Conservation Commission.

"(3) The Executive Director of the Arkansas Soil and Water Conservation Commission is directed to identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and authorities of the Arkansas Soil and Water Conservation Commission before the effective date of the name change."

Acts 2005, No. 1243, § 4, provided:

"(a) This act shall not be construed as impairing the continued effectiveness of any regulations or orders promulgated or issued by the Arkansas Soil and Water

Conservation Commission before the effective date of this act.

“(b) This act shall not be construed as extinguishing or otherwise affecting the unexpired terms of any current members of the Arkansas Soil and Water Conservation Commission.”

Acts 2005, No. 1243, § 5, provided: “The Arkansas Code Revision Commission shall replace the name ‘Arkansas Soil and Water Conservation Commission’ in all appropriate sections of the Arkansas Code with the name ‘Arkansas Natural Resources Commission’.”

Publisher’s Notes. Acts 1963, No. 14, § 10, abolished the Water Conservation Commission and the Water Compact Commission and transferred all functions, powers, and duties of those commissions and the Arkansas Geological and Conservation Commission, in relation to soil conservation and flood control, to the Arkansas Soil and Water Conservation

Commission. The Arkansas Soil and Water Conservation Commission was also deemed to have taken over all executory contracts negotiated by each of those commissions in relation to soil conservation and flood control, unless it disaffirmed the contracts within a reasonable time after 1963.

Acts 1971, No. 38, § 16, transferred the Soil and Water Conservation Commission to the Department of Commerce. However, Acts 1983, No. 691, abolished the Department of Commerce, and § 6 of that act provided that the Soil and Water Conservation Commission should function as an independent agency in the same manner as it had functioned prior to its transfer.

Amendments. The 2005 amendment substituted “Arkansas Natural Resources Commission” for “Arkansas Soil and Water Conservation Commission.”

15-20-202. Members.

(a) The Arkansas Natural Resources Commission shall consist of nine (9) members who are residents and electors of this state, to be appointed by the Governor and with the advice and consent of the Senate.

(b) At least two (2) members shall reside in each congressional district as the districts exist on August 1, 1985.

(c) For each member appointed to a regular term, the term of office shall commence on January 15 following the expiration date of the prior term and shall end on January 14 of the seventh year following the year in which the regular term commenced.

(d) Any vacancies arising in the membership of the commission for any reason other than expiration of the regular terms for which such members were appointed shall be filled by appointment by the Governor and to be thereafter effective until the expiration of those terms, subject, however, to the confirmation of the Senate when it is next in session.

(e) Before entering upon his or her duties, each member of the commission shall take and subscribe and file in the office of the Secretary of State an oath to support the Constitution of the United States and the Constitution of the State of Arkansas, and to faithfully perform the duties of the office upon which he or she is about to enter.

(f) Members of the commission shall receive no pay for their services but may receive expense reimbursement and stipends in accordance with §§ 25-16-901 et seq. and 15-20-207.

History. Acts 1963, No. 14, §§ 2-5; A.S.A. 1947, §§ 6-616, 9-119 — 9-122; 1983, No. 184, § 1; 1985, No. 1051, § 3; Acts 1997, No. 250, § 104.

Publisher's Notes. As originally constituted, the Arkansas Soil and Water Conservation Commission had only seven members whose terms were arranged so that one expired each year. Acts 1985, No. 1051, § 3, increased commission membership to nine by appointment of two addi-

tional members, one to serve until January 15, 1990, and one to serve until January 14, 1991, whose successors shall serve full seven-year terms. The terms of the seven members of the commission serving on January 1, 1985, were not cut short.

15-20-203. Offices — Seal.

(a) The officer or commission having custody of the public buildings shall assign to the Arkansas Natural Resources Commission suitable office space in the State Capitol Building or other office building located on the State Capitol grounds, with the necessary conveniences for the transaction of its business and the safekeeping of its records.

(b) The Governor shall procure an official seal for the use of the commission.

History. Acts 1963, No. 14, § 6; A.S.A. 1947, § 9-123.

15-20-204. Organization.

The Arkansas Natural Resources Commission shall from time to time select from its membership a chair and a vice chair. The Executive Director of the Arkansas Natural Resources Commission, hereinafter provided for, shall be ex officio secretary of the commission but shall have no vote on matters coming before it.

History. Acts 1963, No. 14, § 7; A.S.A. 1947, § 9-124.

15-20-205. Executive director.

(a) The Executive Director of the Arkansas Natural Resources Commission shall be appointed by and serve at the pleasure of the Governor.

(b) The executive director shall be charged with the duty of administering the provisions of this subchapter and the rules, regulations, and orders established thereunder.

(c) The commission, by resolution duly adopted, may delegate to the executive director any of the powers or duties vested in or imposed upon it by this subchapter. These delegated powers and duties may be exercised by the executive director in the name of the commission.

(d) The executive director shall be custodian of all property held in the name of the commission and shall be ex officio the disbursing agent of all funds available for its use.

(e)(1) The executive director shall furnish bond to the state, with corporate surety thereon, in the penal sum of ten thousand dollars (\$10,000), conditioned that he or she will faithfully perform his or her duties of employment and properly account for all funds received and disbursed by him or her.

(2) An additional disbursing agent's bond shall not be required of the executive director.

(3) The bond so furnished shall be filed with the Secretary of State and an executed counterpart thereof shall be filed with the Auditor of State.

History. Acts 1963, No. 14, §§ 8, 9; A.S.A. 1947, §§ 9-125, 9-126.

A.C.R.C. Notes. The operation of subsection (e) of this section was suspended by adoption of a self-insured fidelity bond program for state officers, officials, and

employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. Subsection (e) of this section may again become effective upon cessation of coverage under that program. See § 21-2-703.

15-20-206. Rules and regulations — Meetings — Oaths, subpoenas, etc. — Judicial review.

(a) For the purpose of carrying out its functions, the Arkansas Natural Resources Commission shall have authority to make and amend and enforce all necessary or desirable rules, regulations, and orders not inconsistent with law.

(b) The commission shall adopt and may modify rules for the conduct of its business and shall keep a record of its transactions, findings, and determinations. The record shall be public.

(c) The rules shall provide for regular meetings and for special meetings at the call of the Chair of the Arkansas Natural Resources Commission or the Vice Chair of the Arkansas Natural Resources Commission if he or she is for any reason the acting chair, either at his or her own instance or upon the written request of at least four (4) members.

(d) A quorum shall consist of not less than one-half ($\frac{1}{2}$) of the commission membership present at any regular or special meetings, and the affirmative vote of that number shall be necessary for the disposition of any business.

(e) The commission shall meet or hold hearings at such times and places as in each instance may suit the commission's convenience, and all such meetings and hearings shall be open to the public.

(f) In all matters coming before the commission, the commission shall have the power to administer oaths, issue subpoenas, and enforce its decisions and orders pursuant to procedures set out in § 15-22-201 et seq.

(g) Any rule, regulation, or order made by the commission shall be subject to judicial review pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1963, No. 14, § 7; A.S.A. 1947, § 9-124; Acts 1989, No. 258, § 1.

15-20-207. Powers and duties.

The Arkansas Natural Resources Commission shall have the authority to:

(1)(A) Enter into negotiations with the duly authorized representatives of adjoining states relating to the protection and use of interstate waters occurring in underground aquifers, streams, lakes, reservoirs, or natural or artificial channels or impoundments and, with the consent of the Congress, enter into written compacts in relation thereto which shall become effective upon their ratification by the General Assembly and the legislative bodies of the other states which are parties thereto.

(B) In order that it may perform its functions more effectively, the commission shall employ a Water Resources Engineer, and the person so employed, at the time of his or her employment and during the continuance thereof, shall hold a certificate of registration granted by the State Board of Licensure for Professional Engineers and Professional Surveyors;

(2) Cooperate with similar agencies existing in other states, with the several federal departments, and with civic organizations interested in and devoted to water and soil conservation and flood control and prevention;

(3)(A) Cooperate with local organizations, with districts organized under the Arkansas Irrigation, Drainage, and Watershed Improvement District Act of 1949, § 14-117-101 et seq., or other state law of similar import, and with appropriate federal departments and agencies in the development and prosecution of plans for the construction, operation, and maintenance of pools, lakes, reservoirs, dams, levees, ditches, canals, waterways, pumping works, and other facilities.

(B) This cooperation may be for work on improvements on lakes, rivers, bayous, and streams for the purpose of and to provide for irrigation, flood control, and drainage and additionally for preventing erosion, floodwater, and sediment damage and for the conservation, development, utilization, and disposal of water or in furtherance of any such purposes;

(4)(A) Cooperate with counties, municipalities, and the respective instrumentalities thereof and other political subdivisions of the state and other local interests and with the United States Army Corps of Engineers, the Bureau of Reclamation, or other appropriate agency of the federal government in the development and prosecution of plans for water supplies for domestic, municipal, industrial, and other purposes in connection with the construction, maintenance, and operation of federal navigation, flood control, irrigation, or multiple purpose projects whereof the project is of a character that storage or impoundment of water for present or anticipated future demand or need for the purposes stated in this subdivision (4)(A) may be included in any reservoir project in connection with any construction, operation, and maintenance.

(B)(i) Whenever, after having made a detailed study, in conjunction with local interests, of the anticipated present and future demand or need for water for the purposes stated in subdivision (4)(A) of this section, the commission shall be of the opinion that the

plans should provide for the impounding of water for current use or for both current and future use, it shall so advise the appropriate federal agency.

(ii) The commission shall also furnish the agency with a copy of its findings and determinations and the basis upon which the findings and determinations were made, including, but not limited to, estimates of quantities of water which will be required from time to time, the prospective users, and estimates of the amounts of revenues to be derived therefrom, together with additional or other information as shall be required to enable the federal agency to make a judgment as to the feasibility of including storage for the aforesaid purposes in any reservoir project.

(C)(i) The commission shall obtain from the appropriate federal agency an estimate of the entire amounts of construction costs, including interest during construction, which would be allocated to water supply for current use only and for both current and future uses.

(ii) Whenever it shall make a determination, based upon the estimates and its own study, that the costs of the project for either or both uses may be amortized over the life of the project, but in no event to exceed fifty (50) years, it shall so advise the local interests in order that all local interests or any one (1) of them may be in a position to make a firm commitment to pay the cost of that part of the project, providing only for storage for current demand or need or to give reasonable assurances that demands for the use of such storage for both anticipated current and future demand or need will be made within a period of time which will permit the paying out of the costs within the life of the project.

(D)(i) Whenever several entities of local interests are involved, the commission, acting in behalf of all of them on their request, may give the appropriate federal agency reasonable assurance, in writing, that the demands for the use of storage for anticipated future needs, as distinguished from anticipated current needs, will be made within a period of time which will permit the paying out of the costs within the life of the project.

(ii) Nothing in subdivision (a)(4)(D) of this section shall be so construed as to commit the state government either to pay or guarantee the payment of such costs, and a statement to that effect shall be contained in any such writing.

(iii) The foregoing proviso shall not be so construed as to inhibit the right of the commission to pay any costs as related to anticipated future demand or need whenever it shall have been provided with funds for that purpose;

(5) Cooperate with the several federal agencies in the development of their plans for federal public works under the Public Works Acceleration Act or other federal law of similar import in such projects as small watershed, river and harbor, flood control, and soil conservation, and promote river navigation and hydroelectric power;

(6)(A) Receive and expend any moneys arising from federal means, grants, contributions, gratuities, reimbursements, or loans payable or distributable to the State of Arkansas by the United States or any of its agencies or instrumentalities pursuant to any congressional act or rule or regulation of such an agency or instrumentality now or hereafter enacted or promulgated for or on account of any functions performable by the commission.

(B)(i) It shall likewise receive any contributions, grants, or gratuities donated by private persons, associations, or corporations for or on account of any of the functions aforesaid. All moneys so received shall be deposited in the State Treasury unless provisions shall have otherwise been made by the respective federal agencies, private persons, associations, or corporations furnishing the funds.

(ii) However, in the event the General Assembly shall fail to appropriate any such moneys for the use of the commission or in the event the specified use of any such moneys preclude its deposit in the State Treasury, the commission is authorized and empowered to convert any such moneys to the Arkansas Water Development Fund, to be used for the purposes for which granted, donated, or received or as otherwise provided by this subchapter;

(7) Contract and be contracted with;

(8) Take such other action, not inconsistent with law, as it shall deem necessary or desirable to carry out the purposes and intent of this subchapter; and

(9)(A) Execute, issue, and deliver binding and irrevocable conditional or unconditional commitments in the form of letters or other written instruments to lenders of every sort located within or outside the State of Arkansas evidencing the commission's binding, enforceable, and irrevocable commitment and obligation to provide fully amortizing or other permanent financing for water, sewer, solid waste, flood control, drainage, water pollution control abatement and prevention, wetlands, irrigation, and any other projects that the commission may finance under the financial assistance programs that it from time to time administers.

(B) The commission may condition its obligation to provide fully amortizing or other permanent financing upon:

(i) The obtaining of construction, acquisition, or other financing for a qualifying project by a lender acceptable to the commission located within or outside of the State of Arkansas;

(ii) The completion of construction and operational certification of a qualifying project in accordance with commission requirements;

(iii) The acquisition of a project deemed acceptable to the commission;

(iv) The passage of a specified period of time;

(v) The issuance of commission bonds or the availability of other commission funds; or

(vi) Any other conditions of whatever nature that the commission may choose to include in the commitment letter.

History. Acts 1963, No. 14, § 11; 1963, No. 177, § 1; 1969, No. 217, § 7; A.S.A. 1947, § 9-128; Acts 1995, No. 688, § 1; 1997, No. 237, § 2.

U.S. Code. The Public Works Acceleration Act, referred to in this section, is

codified as 42 U.S.C. §§ 2641-2643.

Cross References. Duties of commission, § 15-22-301.

Flood control, § 15-24-101 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Looney, Modification of Arkansas Water Law: Issues and Alternatives, 38 Ark. L. Rev. 221.

15-20-208. Failure to repay loan or fee — Certification of deficiency.

(a) Should any city, town, county, or political subdivision receiving general revenue turnback funds, as defined in the Revenue Stabilization Law, § 19-5-101 et seq., fail, neglect, or refuse to pay for a period of more than ninety (90) days past the due date of any loan payment or fee due the Arkansas Natural Resources Commission, pursuant to:

(1) Any or all of the following statutes:

(A) The Arkansas Waste Disposal and Pollution Abatement Facilities Financing Act of 1987, § 15-22-701 et seq.;

(B) The Arkansas Water Resources Cost Share Finance Act, § 15-22-801 et seq.;

(C) The Arkansas Water Resources Development Act of 1981, § 15-22-601 et seq.;

(D) The Water, Sewer, and Solid Waste Management Systems Finance Act of 1975, § 14-230-101 et seq.; and

(E) The Arkansas Water Development Fund, § 15-22-507;

(2) Rules promulgated or agreements entered pursuant to any of the statutes referred to in subdivision (a)(1) of this section; or

(3) Fail to negotiate repayment of loans made pursuant to the statutes referred to in subdivision (a)(1) of this section, the commission, after notification to the city, town, county, or political subdivision, may certify that amount of deficiencies to the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(b) Upon certification, the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State are directed to withhold from the city's, town's, county's, or other political subdivision's share of general revenue turnback the amount so certified as due the commission and to transfer such amount as directed by the commission for use as provided by law.

History. Acts 1991, No. 648, §§ 1, 2.

15-20-209. Fee assessment for cost recovery.

The Arkansas Natural Resources Commission may assess and collect fees for recovery of the costs of implementing and administering

programs which have been delegated to the commission or to conservation districts.

History. Acts 1993, No. 657, § 3; 1993, No. 942, § 3. subchapter” in §§ 15-20-201 — 15-20-208 may not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to “this

15-20-210. Underground aquifers.

- It is found and determined by the General Assembly that:
- (1) The Sparta Aquifer is being depleted and damaged by salt water intrusion;
 - (2) The preservation and protection of the Sparta Aquifer can best be accomplished through an interstate compact;
 - (3) The Arkansas Natural Resources Commission is currently authorized to enter into interstate compacts to protect interstate waters occurring in streams, lakes, reservoirs, and natural or artificial channels or impoundments; and
 - (4) The commission’s authority should be expanded to allow it to enter into interstate compacts for the protection of underground aquifers.

History. Acts 1997, No. 237, § 1 may not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to “this subchapter” in §§ 15-20-201 — 15-20-208

SUBCHAPTER 3 — ARKANSAS ENVIRONMENTAL QUALITY ACT OF 1973

- SECTION.
- 15-20-301. Title.
 - 15-20-302. State policy.
 - 15-20-303. System of natural areas — Establishment.
 - 15-20-304. Arkansas Natural Heritage Commission — Establishment.
 - 15-20-305. Commission — Members.
 - 15-20-306. Commission — Organization.
 - 15-20-307. [Repealed.]
 - 15-20-308. Commission — Rights, powers, and duties.
 - 15-20-309. Commission — Power to receive gifts of property and to acquire real estate for trade or exchange.

- SECTION.
- 15-20-310. Acquisition of natural areas properties — Categories.
 - 15-20-311. Limitation on purchase of land.
 - 15-20-312. Dedication of property.
 - 15-20-313. Designation of areas of local significance.
 - 15-20-314. Changes in property interests as result of dedication.
 - 15-20-315. Restrictions on alienation or encumbrance.
 - 15-20-316. Exemptions to §§ 15-20-314 and 15-20-315.
 - 15-20-317. Fees for research services.
 - 15-20-318. Use of funds.
 - 15-20-319. Deposit of moneys.

Preambles. Acts 1973, No. 112, contained a preamble which read: “Whereas, the General Assembly of the State of Arkansas determined in Act 297 of 1971 that the preservation of natural areas is in the best interest of this and future genera-

tions of citizens of this state, and directed that a program for the preservation of natural areas be established;
“Now, therefore....”
Effective Dates. Acts 1973, No. 112, § 19: Feb. 13, 1973. Emergency clause

provided: "The General Assembly finds that the restoration of a proper balance among population, resources, economic growth, environmental preservation, and ecological diversity is immediately necessary in the public interest. An emergency is therefore declared to exist, and this act, being immediately necessary for the public health, safety, and welfare, shall be effective from and after its passage and approval."

Acts 1975, No. 227, § 10: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this act on July 1, 1975 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1975 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1975."

Acts 1977, No. 213, § 2: Feb. 21, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing laws of this state do not permit the Natural Heritage Commission to retain title to properties that may be given to the Commission, but requires the Commission to convey the property to some other state agency or department; that said law is discouraging many individuals to donate property to the Natural Heritage Commission to be retained and preserved by the Commission for this and future generations; and that the immediate passage of this act is necessary to enable the Natural Heritage Commission to acquire property and to retain title thereto or to transfer title to some other agency or department of the state, as it may select, if the Commission determines that it would be in the better interest of the property to transfer it to such other state agency. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for

the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 673, § 4: Mar. 23, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws of this State unduly restrict the authority of the Natural Heritage Commission to accept gifts and to use gifts in furtherance of the lawful purposes of the Commission; and that the immediate passage of this Act is necessary to enable the Natural Heritage Commission to accomplish its lawful purposes. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 674, § 4: Mar. 23, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that ecological data contained in the natural heritage data system maintained by the Natural Heritage Commission is of great value to and in great demand by other state and federal agencies, private organizations, and individuals; that use of the system's data contributes to sound planning and economic development; that charges for services rendered should be made to recover actual costs to the Natural Heritage Commission; and that the immediate passage of this Act is necessary to promote environmentally sound economic development and the protection of the State's natural heritage. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (1st Ex. Sess.), No. 9, § 60: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond

July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends

various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

RESEARCH REFERENCES

Ark. L. Notes. Kelley, An Annotated Bibliography of Selected Environmental	Law Resources of Interest to Practicing Attorneys, 1995 Ark. L. Notes 111.
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15-20-301. Title.

This subchapter may be cited and referred to as the “Arkansas Environmental Quality Act of 1973”.

History. Acts 1973, No. 112, § 1; A.S.A. 1947, § 9-1401.

15-20-302. State policy.

To the end that the environment and resources of the State of Arkansas shall be used and preserved for the welfare of all people, it is the policy of the State of Arkansas to:

- (1) Preserve, manage, and enhance the lands, waters, and air of the state with full recognition that this generation is a trustee of the environment for succeeding generations;
- (2) Preserve, to the fullest extent possible, areas of historical, geological, archeological, paleontological, ecological, biological, and recreational importance;
- (3) Promote as wide a range of choice as possible among beneficial uses of the environment; and
- (4) Strike a proper balance among population growth, economic development, environmental preservation, and ecological diversity.

History. Acts 1973, No. 112, § 2; A.S.A. 1947, § 9-1402.

15-20-303. System of natural areas — Establishment.

(a) A state system of natural areas, hereinafter called the “system”, is established.

(b) The system shall consist of lands, waters, and interests therein acquired and administered as provided in this subchapter.

History. Acts 1973, No. 112, § 3; A.S.A. 1947, § 9-1403.

15-20-304. Arkansas Natural Heritage Commission — Establishment.

The Arkansas Natural Heritage Commission, hereinafter called the “commission”, is established.

History. Acts 1973, No. 112, § 4; A.S.A. 1947, § 9-1404.

A.C.R.C. Notes. Former § 15-23-317, which was repealed by Acts 2005, No. 1962, § 70, provided: “Transfer of powers, functions, and duties.

“All powers, functions, and duties of the Arkansas Natural and Scenic Rivers Commission and all funds, equipment, and records of the Arkansas Natural and Scenic Rivers Commission are transferred to the Arkansas Natural Heritage Commission of the Department of Arkansas Heritage.”

Publisher’s Notes. Acts 1975, No. 227, § 1, changed the name of the Arkansas Environmental Preservation Commission to the Arkansas Natural Heritage Commission.

Acts 1975, No. 1001, § 4, transferred the Arkansas Environmental Preservation Commission and all its functions, powers, and duties, by a type 1 transfer, to the Department of Arkansas Natural and Cultural Heritage (now Department of Arkansas Heritage).

15-20-305. Commission — Members.

(a)(1) The Arkansas Natural Heritage Commission shall consist of fifteen (15) members.

(2)(A)(i) Nine (9) of the members shall be appointed by the Governor from persons with an interest in the preservation of natural areas, with two (2) members to be appointed from each congressional district and one (1) member to be appointed from the state at large.

(ii) One (1) member of the commission shall be a member of the board of directors of a levee or drainage district.

(iii) One (1) member shall be chosen from a list of five (5) persons jointly nominated by the Arkansas Farm Bureau Federation, the Arkansas Farmers’ Union, and the Arkansas Agricultural Council.

(iv) One (1) member shall be chosen from a list of five (5) persons nominated by the Arkansas Wood Products Association.

(v) One (1) member shall be chosen from a list of five (5) persons nominated by the Arkansas Wildlife Federation.

(B) Three (3) members shall be appointed by the Speaker of the House of Representatives to serve at the pleasure of the Speaker of the House of Representatives.

(C) Three (3) members shall be appointed by the President Pro Tempore of the Senate to serve at the pleasure of the President Pro Tempore of the Senate.

(b) Any successor appointments and appointments to vacancies on the commission shall be appointed in the same manner.

(c) Members appointed by the Governor shall serve terms of nine (9) years, and all members shall serve until their successors have been appointed and qualified.

(d) When an appointment is made to fill a vacancy, the appointment shall be for the remaining term of the position vacated.

(e) A member of the commission appointed by the Governor who has served two (2) consecutive full terms shall not be eligible for reappointment for a period of one (1) year following the expiration of the second full term.

(f) Members of the commission appointed by the Governor shall be subject to confirmation by the Senate.

(g) Members of the commission shall serve without compensation, except that they may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(h) In addition to the per diem, members shall be paid a mileage allowance equal to the rate designated for state employees for each mile in traveling from their homes and returning.

History. Acts 1973, No. 112, §§ 4-6; A.S.A. 1947, §§ 9-1404 — 9-1406; Acts 1989 (1st Ex. Sess.), No. 9, § 55; 1997, No. 250, § 105; 2001, No. 1288, § 11.

A.C.R.C. Notes. Former § 15-23-316, which was repealed by Acts 2005, No. 1962, § 69, provided: "Arkansas Natural Heritage Commission of the Department of Arkansas Heritage membership."

"In addition to the members of the Arkansas Natural Heritage Commission of the Department of Arkansas Heritage provided for in § 15-20-305, the person serv-

ing as Chair of the Arkansas Natural and Scenic Rivers Commission on August 2, 1997, shall be a voting member of the Arkansas Natural Heritage Commission of the Department of Arkansas Heritage during the remainder of the term for which he or she was appointed to serve on the Arkansas Natural and Scenic Rivers Commission."

Publisher's Notes. The terms of the members of the Arkansas Natural Heritage Commission are arranged so that one term expires every year.

15-20-306. Commission — Organization.

(a) The Governor shall designate one (1) of the initial appointees as Chair of the Arkansas Natural Heritage Commission.

(b) At its first meeting, the Arkansas Natural Heritage Commission shall elect a secretary from its membership and shall adopt procedural rules for transacting its business and keeping records thereof.

(c) Five (5) members shall constitute a quorum for the transaction of business.

(d) The chair shall have a vote in all cases.

History. Acts 1973, No. 112, § 6; A.S.A. 1947, § 9-1406.

15-20-307. [Repealed.]

Publisher's Notes. This section, concerning commission advisors, was repealed by Acts 2001, No. 1288, § 12. The

section was derived from Acts 1973, No. 112, § 8; A.S.A. 1947, § 9-1408.

15-20-308. Commission — Rights, powers, and duties.

The Arkansas Natural Heritage Commission shall have the following rights, powers, and duties:

(1) To choose lands, waters, and interests therein to be acquired in the manner set forth elsewhere in this subchapter for inclusion in the natural areas system, in accordance with criteria specified in § 15-20-310;

(2)(A)(i) To acquire, by purchase, gift, devise, grant, dedication, as hereinafter defined, or otherwise, the fee or other interest in real property for inclusion in the system.

(ii) However, the commission shall not have the power of eminent domain.

(B) The commission shall retain fee title or convey that title to such agency or department of the state as it may select, after due consideration of:

(i) The particular characteristics of a natural area;

(ii) The type and extent of management required to maintain that area in its natural condition;

(iii) The types and extent of activity permissible which are consistent with preservation of natural heritage; and

(iv) Other factors;

(3) To acquire and hold any interest in real property less than fee, including environmental or scenic easements;

(4)(A) To establish and from time to time amend such policies, rules, and regulations for the selection, acquisition, management, protection, and use of the system as it may find necessary or appropriate to preserve the lands or interests therein acquired under this subchapter and carry out the policies of this subchapter.

(B) These policies, rules, and regulations shall prevail, in the event of conflict, over any policies, rules, regulations, and practices of any agency or department that may receive title to any portion of the system;

(5) To cooperate and contract with any federal, state, or local governmental agency, private organization, or individual;

(6)(A) To maintain:

(i)(a) A registry or inventory of lands and waters in the state, whether publicly or privately owned, that retain their primeval character to a substantial degree or that have floral, faunal, ecological, geological, or archeological features of significant scientific, educational, or recreational interest.

(b) The registry shall be known as the "Registry of Natural Areas"; and

(ii) An inventory of habitats of rare, vanishing, or endangered species, subspecies, or populations of plants and animals, and other records of natural areas.

(B) However, the commission shall have no regulatory jurisdiction over lands or interests therein not actually acquired for the natural areas system;

(7) To conduct research and investigation and to publish and disseminate information and recommendations pertaining to natural areas and to the system;

(8) To supervise the protection, management, and use of the system and to administer and enforce its policies, rules, and regulations;

(9) To investigate, promote, advise, and assist in the preservation, protection, and management of natural areas;

(10) To advise the United States Department of Agriculture and the United States Department of the Interior and other agencies of the federal government concerning areas or streams eligible for treatment under federal criteria as wildlife refuges, wilderness areas, or wild, scenic, or recreational rivers; and

(11) To submit to the Governor and the General Assembly and to publish on or before December 1 of each year a report which shall describe and account for the status and condition of each portion of the system and of each natural area listed in the registry.

History. Acts 1973, No. 112, § 9; 1977, No. 213, § 1; A.S.A. 1947, § 9-1409; Acts 2001, No. 959, § 1.

15-20-309. Commission — Power to receive gifts of property and to acquire real estate for trade or exchange.

The Arkansas Natural Heritage Commission shall have the following rights, powers, and duties in addition to those already established by law:

(1)(A) To receive gifts, grants, donations, fee conveyances, or transfers of money and property, both real and personal, from private and public sources, or federal, or either and to sell or dispose of such property, real and personal, or either, as the commission deems advisable.

(B) Any and all funds and income from any and all property so furnished shall be placed in the State Treasury in the Department of Arkansas Heritage Federal Fund and expended in the same manner as other state moneys are expended, upon vouchers drawn by the Director of the Arkansas Natural Heritage Commission;

(2)(A) With the advice and consent of the Legislative Council and the Governor, to acquire, by purchase or otherwise, real property for the purpose of trade or exchange, and to trade or exchange any such property acquired for lands to be included in the natural areas system.

(B) However, the commission shall exercise this power in such a manner that any and all property acquired for the purpose of trade or exchange shall in fact be traded or exchanged forthwith and without delay.

History. Acts 1981, No. 673, § 1; A.S.A. 1947, § 9-1409.2.

15-20-310. Acquisition of natural areas properties — Categories.

(a) In choosing lands, waters, and interests therein for acquisition for the system, the Arkansas Natural Heritage Commission shall observe the policies set forth in § 15-20-302.

(b) The following categories of real property shall be eligible for inclusion in the system:

(1) Areas representative of the various types of lands and habitats typical of those portions of the state still substantially untrammelled by the works of humans;

(2) Areas of substantially undisturbed natural quality;

(3) Areas containing habitat for rare, vanishing, or endangered species, subspecies, or populations of animals or plants;

(4) Areas of unusual aesthetic or ecological quality along the banks of rivers, lakes, or streams;

(5) Areas in private ownership within the boundaries of national forests, wildlife refuges, state wildlife management areas, or similar publicly owned or administered areas;

(6) Swamps, overflow lands, flood plains, or wetlands of unusual aesthetic or ecological quality;

(7) Areas necessary or desirable to serve as buffer zones to protect other portions of the system; and

(8) Any other lands, waters, or interests therein listed in the Registry of Natural Areas.

(c) No acquisition of lands, waters, or any interests therein, whether by dedication or otherwise, shall become effective until after the Governor shall have received thirty (30) days' notice in writing.

History. Acts 1973, No. 112, § 10;
A.S.A. 1947, § 9-1410.

15-20-311. Limitation on purchase of land.

(a)(1) In any county in this state in which thirty-three percent (33%) or more of the total acreage in the county is publicly owned land, the Arkansas Natural Heritage Commission shall not purchase in excess of forty (40) acres per year.

(2) However, the commission may purchase not to exceed forty (40) additional acres in any year in any such county if it first obtains approval of the Legislative Council for such a purchase.

(b) The commission shall not under any circumstance purchase in excess of eighty (80) acres in any such county in any one (1) year unless specifically authorized to do so by legislation enacted by the General Assembly at a regular session, fiscal session, or special session.

History. Acts 1975, No. 227, § 5; A.S.A. 1947, § 9-1409.1; Acts 2009, No. 962, § 33.

in (b), inserted "session, fiscal session" preceding "or special session" and deleted "thereof" at the end.

Amendments. The 2009 amendment,

15-20-312. Dedication of property.

(a) As used in this subchapter, “dedication” means the creation of a scenic, conservation, or environmental easement to be vested in and legally enforceable by the Arkansas Natural Heritage Commission.

(b) Dedication may be either donative or for a consideration.

(c) The owner of the fee title to certain real property, whether a private individual, a private organization, or a public or governmental agency or department may impress such an easement upon his, her, or its property by executing and delivering to the commission, with its consent, articles of dedication specifying the terms and conditions of the easement.

(d)(1) Articles of dedication shall be in writing, under seal, and acknowledged.

(2) The commission shall cause the articles to be recorded by the recorder of deeds in each county wherein any portion of the property affected by the articles shall lie.

History. Acts 1973, No. 112, § 11; A.S.A. 1947, § 9-1411.

RESEARCH REFERENCES

Ark. L. Rev. Acquisition of Public Recreational Access to Privately-Owned Property: Devices, Problems, and Incentives, 29 Ark. L. Rev. 514.

15-20-313. Designation of areas of local significance.

The natural areas system and each portion thereof are declared to be areas of local significance within the meaning of section 4(f) [repealed] of the Department of Transportation Act of 1966, and of section 138 of the Federal-Aid Highway Act of 1968. Nothing in this subchapter shall prohibit or prevent any project or activity now or hereafter authorized or undertaken pursuant to an act of Congress.

History. Acts 1973, No. 112, § 12; A.S.A. 1947, § 9-1412. repealed as 49 U.S.C. § 1653(f), was repealed by Pub. L. No. 97-449.

U.S. Code. Section 4(f) of the Department of Transportation Act of 1966, referred to in this section and formerly codified as 23 U.S.C. § 138. Section 138 of the Federal-Aid Highway Act of 1968, referred to in this section is codified as 23 U.S.C. § 138.

15-20-314. Changes in property interests as result of dedication.

(a) Interests in land created by dedication shall be perpetual and may not be altered, changed, or modified unless the Arkansas Natural Heritage Commission shall find, after public notice and hearing, that:

- (1) The particular change, alteration, or modification is required by imperative public necessity;
- (2) There is no feasible and prudent alternative thereto; and
- (3) All possible planning has been done to minimize harm caused to the system thereby.

(b) At least thirty (30) days' written notice of any such hearing shall be given to:

- (1) The Governor;
- (2) Each official advisor to the commission;
- (3) Each member of the General Assembly; and
- (4) Each person, organization, or entity that shall have requested notice.

(c) Any finding made by the commission as a result of such a hearing shall be subject to judicial review under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) No such alteration, change, or modification in any interest created by dedication shall become effective until the next regular session of the General Assembly following the fulfillment of this section shall have adjourned sine die.

History. Acts 1973, No. 112, § 13;
A.S.A. 1947, § 9-1413.

15-20-315. Restrictions on alienation or encumbrance.

No portion of the natural areas system may be alienated or encumbered, directly or indirectly, in whole or in part, except in accordance with the procedures set forth in § 15-20-314.

History. Acts 1973, No. 112, § 14;
A.S.A. 1947, § 9-1414.

15-20-316. Exemptions to §§ 15-20-314 and 15-20-315.

None of the provisions of §§ 15-20-314 and 15-20-315 shall be deemed to apply to:

- (1) The acquisition of land or the construction of structures thereon required for the operation of railroad facilities; or
- (2) The construction of necessary public utility structures or facilities, the construction of which has been permitted by order of the Arkansas Public Service Commission or any successor agency, if the Arkansas Natural Heritage Commission has been given notice of and an opportunity to comment upon and participate in each application and hearing which resulted in such an order of permission.

History. Acts 1973, No. 112, §§ 15, 16;
A.S.A. 1947, §§ 9-1415, 9-1416.

15-20-317. Fees for research services.

The Arkansas Natural Heritage Commission shall establish by rule and operate a system of fees or special charges to defray the expense of providing research services to users of the heritage data system.

History. Acts 1981, No. 674, § 1; A.S.A.
1947, § 9-1417.

15-20-318. Use of funds.

Any and all moneys, funds, and property shall be used solely for the purpose of carrying out the provisions of § 15-20-308.

History. Acts 1981, No. 673, § 2; A.S.A. 1947, § 9-1409.3.

15-20-319. Deposit of moneys.

Any and all moneys so collected shall be placed in a bank account created specifically for the continuing operation of the natural heritage data system developed by the Nature Conservancy.

History. Acts 1981, No. 674, § 2; A.S.A. 1947, § 9-1418.

SUBCHAPTER 4 — CONSERVATION EASEMENT ACT

SECTION.	SECTION.
15-20-401. Title.	15-20-406. Duration.
15-20-402. Definitions.	15-20-407. Effect on existing interests.
15-20-403. Applicability and construction.	15-20-408. Validity.
15-20-404. Creation, conveyance, etc.	15-20-409. Judicial actions.
15-20-405. Acceptance.	15-20-410. Easements held by Old State House Commission.

Cross References. For comments regarding this Uniform Conservation Act, see Commentaries Volume B.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Property, 6 U. Ark. Little Rock L.J. 635.	sponse to the Farmland Crisis: States' Application of Agricultural Zoning, 11 U. Ark. Little Rock L.J. 515.
Popp, A Survey of Governmental Re-	

15-20-401. Title.

This subchapter shall be known and may be cited as the "Conservation Easement Act".

History. Acts 1983, No. 567, § 6; A.S.A. 1947, § 50-1206.

RESEARCH REFERENCES

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

15-20-402. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open-space values of real property; assuring its availability for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property;

(2) "Holder" means:

(A) Any state agency, county, city of the first class or city of the second class, or incorporated town empowered to hold an interest in real property under the laws of this state or the United States; or

(B) A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property; and

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

History. Acts 1983, No. 567, § 1; A.S.A. 1947, § 50-1201.

15-20-403. Applicability and construction.

(a) This subchapter applies to any interest created after July 4, 1983, which complies with this subchapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This subchapter applies to any interest created before July 4, 1983, if it would have been enforceable had it been created after July 4, 1983, unless retroactive application contravenes the Constitution or laws of this state or the United States.

(c) This subchapter does not invalidate any otherwise valid interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, which was created under §§ 15-20-301 — 15-20-308, 15-20-310, and 15-20-312 — 15-20-316, Acts 1975, No. 882 [repealed], or any other law of this state.

(d)(1) This subchapter shall not be construed to imply that any restriction, easement, covenant, or condition which does not come within the purview of this subchapter, on account of any provisions hereof, shall be unenforceable.

(2) Nothing in this subchapter shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain, or otherwise and to use land for public purposes.

(3) Nothing in this subchapter shall be construed to repeal or diminish any of the powers, functions, or responsibilities of any state agency, county, city of the first class or city of the second class, or incorporated town.

History. Acts 1983, No. 567, § 5; A.S.A. 1947, § 50-1205.

15-20-404. Creation, conveyance, etc.

Except as otherwise provided in this subchapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

History. Acts 1983, No. 567, § 2; A.S.A. 1947, § 50-1202.

15-20-405. Acceptance.

No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

History. Acts 1983, No. 567, § 2; A.S.A. 1947, § 50-1202.

15-20-406. Duration.

Except as provided in § 15-20-409(b), a conservation easement is unlimited in duration unless the instrument creating it provides otherwise.

History. Acts 1983, No. 567, § 2; A.S.A. 1947, § 50-1202.

15-20-407. Effect on existing interests.

An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

History. Acts 1983, No. 567, § 2; A.S.A. 1947, § 50-1202.

15-20-408. Validity.

A conservation easement is valid even though:

- (1) It is not appurtenant to an interest in real property;
- (2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract.

History. Acts 1983, No. 567, § 4; A.S.A. 1947, § 50-1204.

15-20-409. Judicial actions.

(a) An action affecting a conservation easement may be brought by:

(1) An owner of an interest in the real property burdened by the easement;

(2) A holder of the easement;

(3) A person having a third-party right of enforcement; or

(4) A person authorized by other law.

(b) This subchapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

(c) Conservation easements may be enforced by injunction or other proceeding in equity and shall entitle representatives of the holder to enter the land in a reasonable manner and at reasonable times to assure compliance.

History. Acts 1983, No. 567, § 3; A.S.A. 1947, § 50-1203.

15-20-410. Easements held by Old State House Commission.

(a)(1) Approval of the creation, modification, or termination of a conservation easement held by the Old State House Commission shall be executed by the Director of the Old State House Commission in accordance with the rules and regulations promulgated by the Old State House Commission to assure that conservation easements shall be in the public interest.

(2) Approval shall be evidenced by a certificate of approval, certificate of modification, or certificate of termination duly executed on behalf of the Old State House Commission and duly recorded in the deed records of the county in which the real property is located.

(b) In determining whether the conservation easement or its continuance is in the public interest, the Old State House Commission shall take into consideration any national, state, regional, and local comprehensive land use or development plan affecting the historical, architectural, archeological, or cultural aspects of the real property.

(c) A conservation easement held by the Old State House Commission may be modified or released, in whole or in part, by the Old State House Commission for such consideration, if any, as the Old State

House Commission may determine, in the same manner as the Old State House Commission may dispose of land or other interests in land, but only after a public hearing upon reasonable public notice under the procedures established by the Old State House Commission.

(d) All easements in the name of the Arkansas Commemorative Commission are transferred to the Old State House Commission.

History. Acts 1983, No. 567, § 2; A.S.A. 1947, § 50-1202; Acts 2001, No. 68, § 2.

Cross References. Old State House Commission, § 13-7-201 et seq.

SUBCHAPTER 5 — ARKANSAS NATURAL AREAS PROTECTION ACT

SECTION.

15-20-501. Definitions.

15-20-502. Rules and regulations — Enforcement — Penalties.

SECTION.

15-20-503. Exceptions.

15-20-501. Definitions.

As used in this subchapter:

(1) “Commission” means the Arkansas Natural Heritage Commission;

(2) “Director” means the Director of the Arkansas Natural Heritage Commission or his or her appointed agents; and

(3) “Natural area” means any real property held by the commission in fee or less than fee interest, along with all appurtenances thereto.

History. Acts 1989, No. 381, § 1; 2005, No. 1962, § 65.

Amendments. The 2005 amendment

inserted “As used in this subchapter,” and redesignated former (a), (b) and (c) as present (1), (2) and (3), respectively.

15-20-502. Rules and regulations — Enforcement — Penalties.

(a) The Arkansas Natural Heritage Commission shall have the authority to promulgate rules and regulations establishing policies governing the use and protection of natural areas.

(b) Any person violating any of the rules and regulations promulgated by the commission governing natural areas shall upon conviction be fined not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250), or imprisoned for not less than ten (10) days nor more than thirty (30) days for each and every offense.

(c) Any law enforcement officer shall have the right to issue citations and to apprehend persons detected violating any rules or regulations promulgated by the commission for use and protection of natural areas and take offenders before any court having jurisdiction in the county where the offense is committed.

(d) The Director of the Arkansas Natural Heritage Commission may apply to the circuit court of any county in which a violation of this subchapter is occurring or in which the director has reasonable cause to believe a violation of this subchapter is about to occur, and that court shall have jurisdiction to grant a temporary or permanent injunction

restraining any person from violating this subchapter without requiring the director to post bond during the pendency of this action.

(e)(1) In addition to criminal penalties set forth in subsection (b) of this section, any person who violates any rules and regulations promulgated by the commission governing natural areas or who causes such a violation by his or her employee or agent shall be liable for a civil penalty of five hundred dollars (\$500) or three (3) times the value of the damages caused, whichever is the greater, the penalty to be recovered in an action brought by the Attorney General or the commission's attorney in the proper circuit court.

(2) The penalty shall be used to restore the natural area or to secure the preservation of similar areas.

History. Acts 1989, No. 381, § 2.

15-20-503. Exceptions.

(a) Activities and consequences thereof by employees of the Arkansas Natural Heritage Commission or their agents or by persons under contract to the commission or their agents shall not be construed as violations of this subchapter when such employees, persons, or agents are acting in performance of their official duties.

(b) Activities and consequences thereof conducted pursuant to and in accord with the provisions of any permit or special authorization issued by the Director of the Arkansas Natural Heritage Commission shall not be construed as violations of this subchapter.

History. Acts 1989, No. 381, § 3.

SUBCHAPTER 6 — ARKANSAS CAVE RESOURCES PROTECTION ACT

SECTION.

15-20-601. Legislative findings and policy.

15-20-602. Definitions.

15-20-603. Vandalism — Penalties.

SECTION.

15-20-604. Pollution — Penalties.

15-20-605. Cave conservation.

15-20-606. Liability of owners limited.

15-20-607. Enforcement.

15-20-601. Legislative findings and policy.

The General Assembly finds that caves are uncommon geologic phenomena, and that the minerals deposited therein may be rare and occur in unique forms of great beauty which are irreplaceable if destroyed. Also irreplaceable are the cultural resources in caves which are of great scientific and historic value. It is further found that the organisms which live in caves are unusual and of limited numbers, that many are rare and endangered species, and that caves are a natural conduit for groundwater flow and are highly subject to water pollution, thus having far-reaching effects transcending man-made property boundaries. It is therefore declared to be the policy of the State of Arkansas and the intent of this subchapter to protect these unique natural and cultural resources.

History. Acts 1989, No. 523, § 1.

15-20-602. Definitions.

As used in this subchapter:

(1) "Archeological site" means physical evidence of human activity which is fifty (50) years old or older;

(2)(A)(i) "Cave" means any naturally formed cavity beneath the surface of the earth which is enterable by people by a natural entrance into the bedrock.

(ii) For the purposes of this subchapter, "cave" also includes any rock shelter formed by an overhanging bluff whenever the bluff is undercut by at least twenty feet (20').

(B) "Cave" does not include any mine or other human excavation;

(3) "Cave life" means any life-form normally found in a cave or subterranean water system;

(4) "Cold water solution" means solution processes occurring below seventy degrees Fahrenheit (70° F);

(5) "Owner" means any person or the State of Arkansas and any of its agencies, departments, boards, commissions, and other political subdivisions holding any possessory estate in any cave and any agent of such a person or governmental entity;

(6) "Sinkhole" means a depression of the surface of the earth due to solution or collapse of material below the surface; and

(7)(A) "Speleothem" means any mineral deposit formed within a cave, including, but not limited to, stalactites, stalagmites, and all other forms of minerals precipitated from cold water solution.

(B) "Speleothem" does not include cementation of sediments by calcium salts.

History. Acts 1989, No. 523, § 2.

15-20-603. Vandalism — Penalties.

(a) It shall be unlawful for any person, without express permission of the owner, to purposefully or recklessly:

(1) Break, carve, mark upon, or deface the natural rock surface of any cave, whether wall, ceiling, or floor, any speleothem, whether attached or previously broken, or any man-made material within the cave which constitutes an archeological site or was placed within the cave under permission of the owner;

(2) Remove from the cave any material protected by this subchapter;

(3) Damage in any way any lock, gate, door, or other obstruction designed to control access to any cave, even though entry thereto may not be gained;

(4) Remove or deface any sign stating that the cave is posted or citing provisions of this subchapter; and

(5) Excavate, deface, or disrupt the integrity of any identifiable archeological or paleontological site which may be found in any cave.

(b)(1) The entering or remaining in a cave which has not been posted by the owner shall not by itself constitute a violation of this section.

(2) Any permission obtained under the provisions of this subchapter shall be deemed sufficient compliance with any law relating to recreational use of private lands.

(3) Subject to any restrictions imposed by the owner, it shall not be a violation of this subchapter to move any dangerous or obstructive material or to place shoring or anchorage where necessary for safe passage or to place small isolated marks where necessary to recover a location critical to a measurement or study.

(c) Any person who violates the provisions of this section shall be guilty of a Class A misdemeanor.

History. Acts 1989, No. 523, § 3.

15-20-604. Pollution — Penalties.

(a) It shall be unlawful for any person to knowingly store, dump, litter, dispose of, or otherwise place any refuse, garbage, dead animals, sewage, or toxic substances harmful to cave life or humans in any cave or sinkhole.

(b) It shall be unlawful to burn within a cave or sinkhole any material which produces any smoke or gas which is harmful to any organism naturally occurring in the cave.

(c) This section shall not prohibit the operation within a cave of any source of flame capable of being carried in the hand or attached to a person, provided that the heat and exhaust of such a device is not directed onto any cave life or used as prohibited in § 15-20-603(a).

(d) This section shall not be interpreted to prohibit or regulate any agricultural or silvacultural practice whatever nor to prohibit or regulate the charging of a fee for admission to a cave.

(e) Any person who violates the provisions of this section shall be guilty of a Class A misdemeanor.

History. Acts 1989, No. 523, § 4.

15-20-605. Cave conservation.

Any cave owner may, at the owner's discretion and with the consent of the Arkansas Natural Heritage Commission, enter into an agreement with the commission for the purpose of applying conservation measures to the owner's cave.

History. Acts 1989, No. 523, § 5.

15-20-606. Liability of owners limited.

Neither the owner of a cave nor his or her employees or agents acting within the scope of their authority shall be liable for injuries sustained by any person using the cave for recreational or scientific purposes if no

charge has been made for the use of the cave. This section is supplemental to any other limitation of landowner liability which may be in effect.

History. Acts 1989, No. 523, § 6.

15-20-607. Enforcement.

In addition to the enforcement of this subchapter by criminal process, an owner may apply to the circuit court of any county in which he or she has reasonable cause to believe conduct prohibited by this subchapter is occurring or is about to occur for a temporary or permanent injunction restraining any person from such conduct, and the court shall have jurisdiction to grant all proper relief without requiring the owner to post bond during pendency of the action.

History. Acts 1989, No. 523, § 7.

SUBCHAPTER 7 — ARKANSAS SCENIC RESOURCES ACT OF 1991

SECTION.

- 15-20-701. Title.
- 15-20-702. Policy.
- 15-20-703. Definitions.
- 15-20-704. Effect of subchapter.
- 15-20-705. Duties of agencies.

SECTION.

- 15-20-706. Registry of Scenic Resources.
- 15-20-707. Arkansas Scenic Resources Preservation Coordinating Committee.
- 15-20-708. Duties of committee.

Preambles. Acts 1991, No. 999 contained a preamble which read: “Whereas, the General Assembly of the State of Arkansas determined in Act 112 of 1973 that it is in the best interest of the citizens of this state to preserve, manage, and enhance the lands, waters, and air of the state with full recognition that this generation is a trustee of the environment for succeeding generations; and
“Whereas, the State of Arkansas has invested millions of tax dollars in advertising campaigns to promote itself as ‘The Natural State’; and
“Whereas, tourism is among the state’s major industries; and
“Whereas, sight-seeing is far and away the leading activity of the state’s travelers,
“Now therefore”
Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause

provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

15-20-701. Title.

This subchapter may be cited and referred to as the “Arkansas Scenic Resources Act of 1991”.

History. Acts 1991, No. 999, § 1.

15-20-702. Policy.

It is the policy of the State of Arkansas to:

- (1) Preserve, manage, and enhance the scenic beauty of lands and rights-of-way owned or administered by state agencies;
- (2) Encourage local, regional, and federal governmental agencies to give priority to landscape protection and enhancement; and
- (3) Direct state agencies to assist private organizations and individuals in the preservation of the state’s natural beauty.

History. Acts 1991, No. 999, § 2.

15-20-703. Definitions.

As used in this subchapter:

- (1) “Commission” means the State Parks, Recreation, and Travel Commission;
- (2) “Committee” means the Arkansas Scenic Resources Preservation Coordinating Committee created by this subchapter;
- (3) “Department” means the Department of Parks and Tourism; and
- (4) “Registry” means the state Registry of Scenic Resources created by this subchapter.

History. Acts 1991, No. 999, § 3.

15-20-704. Effect of subchapter.

This subchapter shall not affect the rights of private landowners, nor shall it repeal any other law.

History. Acts 1991, No. 999, § 9.

15-20-705. Duties of agencies.

(a) The State Parks, Recreation, and Travel Commission and the Department of Parks and Tourism shall have the following duties in addition to those otherwise prescribed by law:

- (1) To identify and maintain a registry of lands and waters in the state, whether publicly or privately owned, that exhibit outstanding characteristics of scenic beauty;
- (2) To cooperate with the Arkansas Scenic Resources Preservation Coordinating Committee and any federal, state, or local government agency, private organization, or individual;
- (3) To investigate, promote, advise, and assist in the preservation, protection, enhancement, and management of scenic resources;

(4) To encourage private organizations and individuals to recognize scenic resources and to utilize “best management practices” in all instances, particularly those affecting scenic resources;

(5) To encourage scenic resources protection by working with agencies and individuals to set up demonstration projects involving such techniques as wildflower plots, adopt-a-spot programs, wetlands restoration, and native plantings wherever possible;

(6) To notify federal agencies of the state’s interest in protecting scenic resources and to request that scenic resources protection and enhancement be included in the appropriate planning activities of the agencies;

(7) By December 1 of each year, submit a report to the Governor and the General Assembly describing and accounting for the status and condition of each entry listed in the Registry of Scenic Resources and including any recommendations to be considered by the Governor and General Assembly for improving and enhancing the scenic beauty of the state; and

(8) To bring the registry to the attention of the public through its advertising and public relations efforts.

(b) The commission shall not have regulatory power but shall strongly encourage other state agencies to use existing legislation to protect the scenic resources of the state.

History. Acts 1991, No. 999, §§ 5, 6.

15-20-706. Registry of Scenic Resources.

(a) There is established the Registry of Scenic Resources.

(b) The registry shall identify lands and waters in the state that exhibit outstanding characteristics of scenic beauty.

(c) The registry shall be maintained by the Department of Parks and Tourism.

(d) The registry shall be prepared in a manner which will enable the Department of Arkansas Heritage to include registry records in its environmental review procedures.

History. Acts 1991, No. 999, § 4.

15-20-707. Arkansas Scenic Resources Preservation Coordinating Committee.

(a) To assist the State Parks, Recreation, and Travel Commission, an advisory committee to be known as the “Arkansas Scenic Resources Preservation Coordinating Committee” is established.

(b) The committee shall consist of nine (9) members as follows:

(1) The Directors of the Department of Parks and Tourism, the Arkansas State Highway and Transportation Department, the Keep Arkansas Beautiful Commission, the Arkansas Forestry Commission, and the Department of Arkansas Heritage; and

(2)(A) Four (4) members, each having an interest in scenic resources, shall be appointed by the Governor with each congressional district being represented.

(B) The members appointed by the Governor shall serve four-year terms.

(c) The Director of the Department of Parks and Tourism shall serve as Chair of the Arkansas Scenic Resources Preservation Coordinating Committee.

(d) The committee shall meet at the call of the chair.

(e) A majority of the committee shall constitute a quorum.

(f) The members of the committee shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1991, No. 999, § 7; 1997, No. 250, § 106.

Publisher's Notes. Acts 1991, No. 999, § 7, provided that the initial appoint-

ments made by the Governor shall be made so that the term of one (1) member shall expire each year.

15-20-708. Duties of committee.

The Arkansas Scenic Resources Preservation Coordinating Committee shall have the following duties:

(1) To assist in the development of criteria, guidelines, and standards for the Registry of Scenic Resources;

(2) To provide recommendations and nominations to the State Parks, Recreation, and Travel Commission and Department of Parks and Tourism for entries in the registry;

(3) To act as a coordinating body for the efforts of other local, state, or federal agencies;

(4) To assist the commission and department in the preparation of the annual report; and

(5) To maintain official minutes and records of the committee.

History. Acts 1991, No. 999, § 8.

SUBCHAPTER 8 — ARKANSAS SOIL AND WATER CONSERVATION COMMISSION POOLED LOAN SECURITIZATION ACT OF 1995

SECTION.

15-20-801. Definitions.

15-20-802. Commission authorized to
pledge or sell loans or
other securities.

SECTION.

15-20-803. Commission to retain financial advisor.

15-20-804. Limitation.

15-20-801. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Natural Resources Commission;

(2) "Fairness opinion" means a written opinion by the commission's financial advisor stating that the proposed transaction is structured in a commercially reasonable manner and that the commission is receiving fair, adequate, and equitable consideration in exchange for the sale or pledge of the loans;

(3) "Financial advisor" means any entity, either private or governmental, that routinely provides advice to governmental entities regarding their capital improvement and financial needs;

(4) "Investors" means any individuals, institutions, or other entities that acquire an interest in loans to be sold or pledged by the commission;

(5) "Loans" means those obligations owed to and owned by the commission pursuant to those financial assistance programs that the commission may administer from time to time;

(6) "Pledge" means to pledge, encumber, mortgage, hypothecate, or otherwise grant a security interest in;

(7) "Pool" means to gather together into a single portfolio;

(8) "Sell" means to grant, transfer, convey, dispose of, or otherwise alienate; and

(9) "Transaction enhancement" means any form of insurance, any contractual provision, any fund, or any other obligation that may be supplied by either the commission or any third party which shall serve to enhance the creditworthiness of the pool.

History. Acts 1995, No. 690, § 1.

15-20-802. Commission authorized to pledge or sell loans or other securities.

(a)(1) The Arkansas Natural Resources Commission is authorized to pledge or sell loans or undivided interests in pools of loans to investors in consideration for the payment to the commission of cash or cash equivalents.

(2) The commission is further authorized to:

(A) Sell the loans or undivided interests in pools of loans to investors at par, a premium, or a discount;

(B) Pledge the loans or undivided interests in pools of loans to investors as security for repayment of commission indebtedness to the investors; or

(C) Otherwise use the loans or undivided interests in pools of loans to collateralize or secure other financial relationships with investors as the commission may deem appropriate.

(b)(1) The commission is authorized to supplement its sale, pledge, or other use of the loans with any form of transaction enhancement that the commission may deem appropriate and that the financial advisor deems fair and reasonable.

(2) Specifically, the commission may:

(A) Establish a cash reserve against which defaulting loans may be offset;

(B) Agree to replace defaulted loans with other loans that the commission subsequently originates or otherwise possesses;

(C) Agree to repurchase defaulted loans;

(D) Sell to investors loans having a collective face value in excess of the par value of the consideration received from the pool sale or pledge in order to provide a pool of loans from which defaulting loans can be offset or replaced; or

(E) Purchase or provide any other form of transaction enhancement as the commission may deem necessary.

(c) The commission is authorized to:

(1) Sell participation certificates or other indicia of ownership to investors that shall evidence the investor's ownership of undivided interests in loans or pools of the loans sold pursuant to the provisions of this subchapter;

(2) Sell bonds to investors that shall evidence the commission's obligation to repay principal, interest, and redemption premium, if any, to those investors purchasing bonds secured by the loans pursuant to the provisions of this subchapter; or

(3) Sell or place any other form of security involving or secured by the loans or pools that the commission may structure or determine to be appropriate.

(d) The commission is authorized to retain the services of bond counsel, financial advisors, underwriters, investment bankers, indenture trustees, portfolio servicers, and other professionals in structuring, documenting, selling, and servicing the loans and securities contemplated to be issued under this subchapter.

(e)(1) The commission is authorized to use the proceeds received from the sale or pledge of the loans:

(A) To fund water, sewer, solid waste, flood control, drainage, water pollution abatement, prevention, or control, wetlands, irrigation, or other projects that the commission may fund under the financial assistance programs that it administers from time to time;

(B) To provide the matching funding for programs sponsored by state or federal governmental agencies or entities that provide assistance for the types of projects listed in this subdivision (e)(1); or

(C) For any other lawful purpose that the commission may identify from time to time.

(2) All proceeds from the sale or pledge of the loans or pools of loans under this subchapter shall be deposited into:

(A) The Arkansas Water Development Fund;

(B) The Water Resources and Waste Disposal Revolving Loan Fund;

(C) The Water, Sewer, and Solid Waste Systems Revolving Fund;

(D) The Arkansas Water Resources Cost Share Revolving Fund; or

(E) Any other fund or account or combination of funds or accounts that the commission shall direct.

(f) The commission is authorized and empowered to sell or pledge single or multiple series or pools of loans with those amortization and

payment schedules and other terms and conditions that the commission may specify from time to time, including, without limitation, the establishment of debt service reserve funds, capitalized interest funds, cost of issuance funds, defaulted loan reserve accounts, and all other forms of accounts or funds that the commission may deem appropriate.

History. Acts 1995, No. 690, §§ 2, 3, 6-9.

15-20-803. Commission to retain financial advisor.

Prior to the sale, pledge, or other use of the loans or undivided interests in pools of loans, the Arkansas Natural Resources Commission shall retain the services of a financial advisor who shall render, prior to the closing of the contemplated transaction, a fairness opinion which shall verify that:

- (1) The loans are properly valued;
- (2) The transaction enhancements, if any, are not excessive or unreasonable; and
- (3) The terms and conditions of the contemplated transaction are fair and reasonable.

History. Acts 1995, No. 690, § 4.

15-20-804. Limitation.

(a) In no event shall the Arkansas Natural Resources Commission obligate or pledge the full faith and credit of the State of Arkansas to secure any obligation sold, pledged, or placed with investors under this subchapter.

(b)(1) The commission shall not pledge its full faith and credit to secure any obligation sold, pledged, or placed with investors under this subchapter.

(2) However, the commission may obligate itself to honor those financial covenants and transaction enhancements that may be associated with the sale or pledge of the loans.

History. Acts 1995, No. 690, § 5.

SUBCHAPTER 9 — ARKANSAS POULTRY FEEDING OPERATIONS REGISTRATION ACT

SECTION.

15-20-901. Title.

15-20-902. Legislative intent.

15-20-903. Definitions.

SECTION.

15-20-904. Registration.

15-20-905. Enforcement.

15-20-906. Disposition of fees and penalties.

15-20-901. Title.

This subchapter shall be known and may be cited as the “Arkansas Poultry Feeding Operations Registration Act”.

History. Acts 2003, No. 1060, § 1.

15-20-902. Legislative intent.

It is found by the General Assembly that:

- (1) Litter provides nutrients that are beneficial to plant growth;
- (2) The proper utilization of litter allows the addition of nutrients to the soil at a low cost;
- (3) Improper utilization may result in a buildup of nutrients in the soil and result in the nutrients' leaving the soil and entering the waters within the state;
- (4) In order to encourage the proper utilization of litter, litter sources must be located and the amount of litter produced in Arkansas quantified; and
- (5) It is necessary for poultry feeding operations to register annually with the Arkansas Natural Resources Commission.

History. Acts 2003, No. 1060, § 1.

15-20-903. Definitions.

As used in this subchapter:

- (1) "Commission" means the Arkansas Natural Resources Commission;
- (2) "Conservation district" means a conservation district created under the Conservation Districts Law, § 14-125-101 et seq.;
- (3) "Director" means the Executive Director of the Arkansas Natural Resources Commission;
- (4) "Land application" means the application of litter, in whole or in part, to land;
- (5) "Litter" means byproducts associated with the confinement of poultry, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof;
- (6) "Litter management system" means any method used to dispose or utilize litter;
- (7) "Person" means any individual, partnership, company, association, fiduciary, corporation, or any organized group of persons whether incorporated or not;
- (8) "Poultry" means chickens, turkeys, ducks, geese, and any other domesticated birds;
- (9) "Poultry processor" means an entity that processes poultry for commercial sale;
- (10)(A) "Poultry feeding operation" means any lot or facility where two thousand five hundred (2,500) or more poultry are housed or confined and fed or maintained on any one (1) day in the preceding twelve-month period.
(B) Multiple poultry houses within a reasonable proximity to one another under the control of one (1) owner shall be considered one (1) facility; and

(11) "Waters within the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this state or any portion of the state.

History. Acts 2003, No. 1060, § 1; inserted "or more" in (10)(A); and inserted 2005, No. 1962, § 66. "to one another" in (10)(B).

Amendments. The 2005 amendment

15-20-904. Registration.

(a) The Arkansas Natural Resources Commission shall operate an annual registration program for the purpose of assembling and maintaining information on the number, composition, and practices of poultry feeding operations in the state.

(b) All poultry feeding operations shall register annually with the commission.

(c) The commission shall promulgate regulations that require a poultry feeding operation to submit, at a time and in a manner determined by the commission, information regarding:

(1) The number and kind of poultry housed or maintained in the poultry feeding operation;

(2) The location of the poultry feeding operation;

(3) The litter management system used;

(4) The litter storage system used and the amount of litter stored;

(5) The acreage owned or controlled by the poultry feeding operation and used for land application of litter;

(6) The land application practices used by the poultry feeding operation and the amount of litter applied;

(7) The amount of litter transferred or otherwise utilized by the poultry feeding operation and the type of transfer or utilization;

(8) The poultry processor or processors with which the poultry feeding operation has contracted to provide poultry; and

(9) Any other relevant information necessary to effect the purposes of this subchapter.

(d) Each poultry feeding operation required to register under this subchapter shall pay an annual fee of ten dollars (\$10.00) to the commission.

(e) All regulations shall be promulgated pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f)(1) Information collected about an individual poultry feeding operation shall not be a public record.

(2) Compilation or summary information that prevents identification of individual poultry feeding operations shall be a public record.

(g) The commission may delegate portions of the annual registration program for implementation to the director or conservation districts, or both.

History. Acts 2003, No. 1060, § 1.

15-20-905. Enforcement.

(a)(1) Agents of the Arkansas Natural Resources Commission shall have the power to enter on private property to determine compliance with this subchapter.

(2)(A) Entry shall not occur without prior notification of the owner, operator, or agent in charge of the property.

(B) Notice shall be given to the owner, operator, or agent in charge of the property at least seventy-two (72) hours before entry.

(3) Documentation of biosecurity measures taken and biosecurity certification received by an inspection agent of the Arkansas Natural Resources Commission or by a conservation district officer, including a biosecurity log book, shall be available to the owner upon request.

(4) Upon notice of disease outbreak by the Arkansas Livestock and Poultry Commission, inspection under this subchapter shall be automatically suspended until notification by the Arkansas Livestock and Poultry Commission that it is safe to resume inspections.

(b)(1) The Arkansas Natural Resources Commission may impose administrative penalties not to exceed five hundred dollars (\$500) per violation against the owner of a poultry feeding operation that fails to comply with the requirements of this subchapter.

(2) The imposition of administrative penalties shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) If the person against whom an administrative penalty has been imposed by the Arkansas Natural Resources Commission under this section fails to pay the penalty to the Arkansas Natural Resources Commission, the Arkansas Natural Resources Commission may file an action to collect the administrative penalty in the circuit court of the county in which the poultry feeding operation is located.

History. Acts 2003, No. 1060, § 1; 2005, No. 1871, § 1.

Amendments. The 2005 amendment deleted (b)(3); redesignated former (b)(4) as present (b)(3); in (a)(2)(A), deleted “If the entry is to a facility where poultry is regularly kept” from the beginning, added “operator, or agent in charge of the prop-

erty” and made related changes; in (a)(2)(B), inserted “operator, or agent in charge of the property” and substituted “seventy-two (72)” for “twenty-four (24)”; and, in (a)(3), inserted “of the Arkansas Soil and Water Conservation Commission or by a conservation district officer” and made a minor stylistic change.

15-20-906. Disposition of fees and penalties.

(a) Fees paid and penalties collected shall be deposited in the Arkansas Water Development Fund and used in furtherance of the nutrient management program, including this subchapter, except that a portion of the fee may be retained by the conservation districts if a portion of the program has been delegated to conservation districts.

(b) Fees or penalties collected shall be cash funds when received by the Treasurer of State and shall not be deposited or deemed to be a part of the State Treasury for the purposes of:

- (1) Arkansas Constitution, Article 5, § 29;
- (2) Arkansas Constitution, Article 16, § 12;
- (3) Arkansas Constitution, Amendment 20; or
- (4) Any other constitutional or statutory provision.

History. Acts 2003, No. 1060, § 1.

SUBCHAPTER 10 — ARKANSAS SOIL NUTRIENT MANAGEMENT PLANNER AND APPLICATOR CERTIFICATION ACT

SECTION.

- 15-20-1001. Title.
 15-20-1002. Legislative intent.
 15-20-1003. Definitions.
 15-20-1004. Nutrient planner program.
 15-20-1005. Nutrient applicator program.

SECTION.

- 15-20-1006. Procedure.
 15-20-1007. Disposition of fees and penalties.
 15-20-1008. Administrative penalties.

Effective Dates. Acts 2003, No. 1059, § 1: effective Jan. 1, 2004, by its own terms.

Acts 2005, No. 253, § 3: Feb. 22, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that applications of soil nutrients have not resulted in excessive nutrient concentrations within the area now excluded from the nutrient surplus area; therefore, persons applying nutrients within that area are no longer required to prepare for pending nutrient management regulation; and that this act is immediately necessary because citizens

will suffer unnecessary economic impacts if they are required to continue to prepare for nutrient management oversight. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-20-1001. Title.

This subchapter shall be known and may be cited as the "Arkansas Soil Nutrient Management Planner and Applicator Certification Act".

History. Acts 2003, No. 1059, § 1.

Publisher's Notes. Acts 2003, No.

1059, § 1 became effective by its own terms on January 1, 2004.

15-20-1002. Legislative intent.

The General Assembly finds that:

(1) Proper application of nutrients is necessary for maximum soil fertility and proper plant growth;

(2) Failure to properly apply nutrients to soil may result in a waste of a valuable resource and may negatively impact waters within the state;

(3) Persons developing soil nutrient plans or applying nutrients to soil should have certain knowledge, skills, and abilities to ensure the proper use of soil nutrients; and

(4) A certification system must be developed to determine that persons certified have the knowledge, skill, and abilities to properly develop nutrient management plans or properly apply soil nutrients.

History. Acts 2003, No. 1059, § 1. 1059, § 1 became effective by its own

Publisher's Notes. Acts 2003, No. terms on January 1, 2004.

15-20-1003. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Natural Resources Commission;

(2) "Crop" means any vegetative cover;

(3) "Director" means the Executive Director of the Arkansas Natural Resources Commission;

(4) "Litter" means byproducts associated with the confinement of livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof;

(5) "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and poultry;

(6)(A) "Nutrient" means a substance or recognized plant nutrient, element, or compound that is used or sold for its plant-nutritive content or its claimed nutritive value.

(B) "Nutrient" includes litter, compost as fertilizer, commercially manufactured chemical or organic fertilizers, sewage sludge, or combinations thereof;

(7) "Nutrient application" means the process by which humans apply nutrients to soil or associated crops;

(8) "Nutrient applicator" means any person who applies nutrients to soil or associated crops;

(9) "Nutrient management plan" means any plan prepared to assist landowners and operators in the proper management and utilization of nutrient sources for maximum soil fertility and protection of the waters within the state;

(10)(A) "Nutrient surplus area" means the:

(i) Illinois River watershed, included within Benton, Crawford, and Washington counties;

(ii) Spavinaw Creek watershed, included within Benton County;

(iii) Honey Creek watershed, included within Benton County;

(iv) Little Sugar Creek watershed, included within Benton County;

(v) Upper Arkansas River watershed, which includes Lee Creek within Crawford and Washington counties and Massard Creek within Sebastian County;

(vi) Poteau River watershed, included within Polk, Scott, and Sebastian counties;

(vii) Mountain Fork of the Little River watershed, included within Polk County; and

(viii) Upper White River watershed above its confluence with the Crooked Creek.

(B) No additional areas may be added unless the areas are added as nutrient surplus areas pursuant to the Arkansas Soil Nutrient Application and Poultry Litter Utilization Act, § 15-20-1101 et seq.;

(11) "Person" means any natural person; and

(12) "Waters within the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, including surface and underground, natural or artificial, and public or private, that are contained within, flow through, or border upon this state or any portion of the state.

History. Acts 2003, No. 1059, § 1; 2005, No. 253, § 1.

Publisher's Notes. Acts 2003, No. 1059, § 1 became effective by its own terms on January 1, 2004.

Amendments. The 2005 amendment

substituted "Crooked Creek" for "the Buffalo River, included within Benton, Boone, Carroll, Franklin, Madison, Marion, Newton, Searcy, and Washington counties" in (10)(A)(viii).

15-20-1004. Nutrient planner program.

(a) The Arkansas Natural Resources Commission shall develop and implement a nutrient management education, training, and certification program to certify the minimal competence and knowledge of a person preparing a nutrient management plan.

(b)(1) The planner certification program is voluntary for planners who develop plans outside nutrient surplus areas.

(2) The commission may not require a nutrient planner to become certified unless the planner intends to develop plans for areas within nutrient surplus areas or the plans or the components of the plans are to be paid, in whole or part, by federal or state funds.

(c) The commission shall promulgate regulations that:

(1) Specify qualifications and standards for a person to be deemed competent in nutrient management plan preparation and provide for the issuance of documentation of certification to the person;

(2) Specify the conditions under which a certification issued may be suspended or revoked;

(3) Establish fees to be paid by a person enrolling in the training and certification programs;

(4) Provide for the performance of other duties and the exercise of other powers by the Executive Director of the Arkansas Natural

Resources Commission as may be necessary to provide for the training and certification of a person preparing nutrient management plans; and

(5) Give due consideration to relevant existing agricultural or other certification programs.

History. Acts 2003, No. 1059, § 1.

1059, § 1 became effective by its own

Publisher's Notes. Acts 2003, No. terms on January 1, 2004.

15-20-1005. Nutrient applicator program.

(a) The Arkansas Natural Resources Commission shall develop and implement a nutrient applicator training and certification program to certify the competence and knowledge of a person making nutrient application, including the proper utilization of litter.

(b)(1) The applicator certification program is voluntary for applicators that apply nutrients outside nutrient surplus areas.

(2) The commission may not require a nutrient applicator to become certified unless the applicator intends to apply nutrients within nutrient surplus areas or otherwise utilize litter produced within nutrient surplus areas.

(c) The commission shall promulgate regulations that:

(1) Specify the qualifications and standards for a person to be deemed competent in nutrient application and provide for the issuance of documentation of certification to the person;

(2) Specify the conditions under which a certification issued may be suspended or revoked;

(3) Establish fees to be paid by persons enrolling in the training and certification programs; and

(4) Provide for the performance of other duties and the exercise of other powers by the Executive Director of the Arkansas Natural Resources Commission as may be necessary to provide for the training and certification of a person making nutrient application.

History. Acts 2003, No. 1059, § 1.

1059, § 1 became effective by its own

Publisher's Notes. Acts 2003, No. terms on January 1, 2004.

15-20-1006. Procedure.

(a) The process for the development of regulations and the imposition of administrative penalties shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Any records collected by the Arkansas Natural Resources Commission in furtherance of this subchapter that contain information about a specific nutrient management plan or specific nutrient application shall not be made public record.

History. Acts 2003, No. 1059, § 1.

1059, § 1 became effective by its own

Publisher's Notes. Acts 2003, No. terms on January 1, 2004.

15-20-1007. Disposition of fees and penalties.

(a) Fees paid and penalties collected shall be deposited in the Arkansas Water Development Fund and used in furtherance of the nutrient management program, including this subchapter.

(b) Fees collected shall be cash funds when received by the Treasurer of State and shall not be deposited or deemed to be a part of the State Treasury for the purposes of:

- (1) Arkansas Constitution, Article 5, § 29;
- (2) Arkansas Constitution, Article 16, § 12;
- (3) Arkansas Constitution, Amendment 20; or
- (4) Any other constitutional or statutory provision.

History. Acts 2003, No. 1059, § 1. 1059, § 1 became effective by its own
Publisher's Notes. Acts 2003, No. terms on January 1, 2004.

15-20-1008. Administrative penalties.

(a) The Arkansas Natural Resources Commission may impose administrative penalties not to exceed one thousand dollars (\$1,000) per violation against any person violating this subchapter or regulations adopted pursuant to this subchapter.

(b) The commission or the Executive Director of the Arkansas Natural Resources Commission may issue subpoenas under § 15-22-208.

(c) If a person against whom an administrative penalty has been imposed by the commission as authorized in this section fails to pay the penalty to the commission, the commission may file an action to collect the administrative penalty in the circuit court of the county in which the person resides.

History. Acts 2003, No. 1059, § 1. 1059, § 1 became effective by its own
Publisher's Notes. Acts 2003, No. terms on January 1, 2004.

**SUBCHAPTER 11 — ARKANSAS SOIL NUTRIENT APPLICATION AND POULTRY
 LITTER UTILIZATION ACT**

SECTION.

- 15-20-1101. Title.
 15-20-1102. Legislative intent.
 15-20-1103. Definitions.
 15-20-1104. Declared nutrient surplus areas.
 15-20-1105. Regulatory considerations.
 15-20-1106. Designated nutrient application.
 15-20-1107. Nutrient management plan.
 15-20-1108. Poultry litter management plan.

SECTION.

- 15-20-1109. Sale or transfer of litter.
 15-20-1110. Litter utilization committee.
 15-20-1111. Implementation.
 15-20-1112. Enforcement.
 15-20-1113. Administrative penalties.
 15-20-1114. No conflict with Arkansas
 Water and Air Pollution
 Control Act.

Effective Dates. Acts 2003, No. 1061, § 1: effective Jan. 1, 2004, by its own terms.

Acts 2005, No. 253, § 3: Feb. 22, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that applications of soil nutrients have not resulted in excessive nutrient concentrations within the area now excluded from the nutrient surplus area; therefore, persons applying nutrients within that area are no longer required to prepare for pending nutrient management regulation; and that this act is immediately necessary because citizens

will suffer unnecessary economic impacts if they are required to continue to prepare for nutrient management oversight. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-20-1101. Title.

This subchapter shall be known and may be cited as the "Arkansas Soil Nutrient Application and Poultry Litter Utilization Act".

History. Acts 2003, No. 1061, § 1.

1061, § 1 became effective by its own terms on January 1, 2004.

Publisher's Notes. Acts 2003, No.

15-20-1102. Legislative intent.

The General Assembly finds that:

(1) In certain areas of Arkansas, applications of soil nutrients may have resulted or in the future may result in excessive soil nutrient concentration;

(2) These applications are not the most effective use of nutrients and if continued could negatively impact the area;

(3) Land application of poultry litter is a significant source of nutrients in these areas; and

(4) Therefore, in certain areas, it is necessary to limit the application of nutrients and to regulate the utilization of poultry litter to protect the area while maintaining soil fertility.

History. Acts 2003, No. 1061, § 1.

1061, § 1 became effective by its own terms on January 1, 2004.

Publisher's Notes. Acts 2003, No.

15-20-1103. Definitions.

As used in this subchapter:

(1) "Certified nutrient applicator" means any natural person that has shown to the Arkansas Natural Resources Commission that he or she has the minimal knowledge and technical competence necessary to properly apply nutrients;

(2) "Commission" means the Arkansas Natural Resources Commission;

(3) "Conservation district" means a conservation district created under the Conservation Districts Law, § 14-125-101 et seq.;

(4) "Crop" means any vegetative cover;

(5) "Director" means the Executive Director of the Arkansas Natural Resources Commission;

(6) "Litter" means byproducts associated with the confinement of livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof; -

(7) "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and poultry;

(8)(A) "Nutrient" means a substance or recognized plant nutrient, element, or compound that is used or sold for its plant-nutritive content or its claimed nutritive value.

(B) "Nutrient" includes substances in litter, compost as fertilizer, commercially manufactured chemical and organic fertilizers, sewage sludge, and combinations thereof;

(9) "Nutrient application" means the process by which humans apply nutrients to soil or associated crops;

(10) "Nutrient applicator" means any person that applies nutrients to soil or associated crops;

(11) "Nutrient management plan" means a plan prepared to assist landowners and operators in the management of fertilizers, litter, sewage sludges, compost, and other nutrient sources for maximum soil fertility and protection of the waters within the state;

(12) "Nutrient surplus area" means an area declared by § 15-20-1104 in which the soil concentration of one (1) or more nutrients is so high or the physical characteristics of the soil or area are such that continued application of the nutrient to the soil could negatively impact soil fertility and the waters within the state;

(13) "Person" means any individual, partnership, company, association, fiduciary, corporation, or any organized group of persons whether incorporated or not;

(14) "Poultry" means chickens, turkeys, ducks, geese, and any other domesticated birds;

(15)(A) "Poultry feeding operation" means any lot or facility where two thousand five hundred (2,500) or more poultry are housed or confined and fed or maintained on any one (1) day in the preceding twelve-month period.

(B) Multiple poultry houses within a reasonable proximity to one another under the control of one (1) owner shall be considered one (1) facility;

(16) "Poultry litter management plan" means the plan for utilization of litter by poultry feeding operations pursuant to § 15-20-1108;

(17) "Protective rate" means the agronomic rate or other rate as determined by the commission of a designated nutrient that provides for proper crop utilization and prevention of significant impact to waters within the state; and

(18) "Waters within the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this state or any portion of the state.

History. Acts 2003, No. 1061, § 1; 2005, No. 1962, § 67.

Publisher's Notes. Acts 2003, No. 1061, § 1 became effective by its own terms on January 1, 2004.

Amendments. The 2005 amendment inserted "or more" in (15)(A); and inserted "to one another" in (15)(B).

15-20-1104. Declared nutrient surplus areas.

(a) The General Assembly declares the following areas to be nutrient surplus areas for phosphorus and nitrogen:

(1) The Illinois River watershed, included within Benton, Crawford, and Washington counties;

(2) The Spavinaw Creek watershed, included within Benton County;

(3) The Honey Creek watershed, included within Benton County;

(4) The Little Sugar Creek watershed, included within Benton County;

(5) The upper Arkansas River watershed, which includes Lee Creek within Crawford and Washington counties and Massard Creek within Sebastian County;

(6) The Poteau River watershed, included within Polk, Scott, and Sebastian counties;

(7) The Mountain Fork of the Little River watershed, included within Polk County; and

(8) The upper White River watershed above its confluence with Crooked Creek.

(b) The Arkansas Natural Resources Commission shall promulgate rules to further define the geographical boundaries of any area declared a nutrient surplus area.

History. Acts 2003, No. 1061, § 1; 2005, No. 253, § 2.

Publisher's Notes. Acts 2003, No. 1061, § 1 became effective by its own terms on January 1, 2004.

Amendments. The 2005 amendment

substituted "Crooked Creek" for "the Buffalo River, included within Benton, Boone, Carroll, Franklin, Madison, Marion, Newton, Searcy, and Washington counties" in (a)(8).

15-20-1105. Regulatory considerations.

In developing regulations to implement this subchapter, the Arkansas Natural Resources Commission shall consider:

(1) The current and projected level of nutrients in the soil within the area;

(2) The current or potential impacts of surplus nutrients within the area;

- (3) Litter produced and applied in the area;
- (4) Commercial fertilizer, compost, and other sources of nutrients applied within the area;
- (5) The current or projected nutrient needs within the area, including the nutrient level necessary to maintain soil fertility, current and future cropping patterns, and those crops' demands for nutrients;
- (6) The soil type, geology, hydrology, and other physical characteristics of the area;
- (7) The types of water bodies and the uses of the waters within the area; and
- (8) Any other relevant information necessary to effect the purposes of this subchapter.

History. Acts 2003, No. 1061, § 1. 1061, § 1 became effective by its own
Publisher's Notes. Acts 2003, No. terms on January 1, 2004.

15-20-1106. Designated nutrient application.

(a) It shall be a violation of this subchapter to apply designated nutrients to soils or associated crops within a nutrient surplus area unless the nutrient application is done in compliance with a nutrient management plan approved by the Arkansas Natural Resources Commission or at a protective rate established by the commission.

(b) After a soil test with nutrient application recommendations is obtained for lands within a nutrient surplus area:

(1) Application of commercial fertilizer may continue in compliance with the protective rate after January 1, 2007; and

(2) The protective rate as indicated by the soil test shall constitute a permit to apply nutrients consistent with the protective rate.

(c) Designated nutrient application within a nutrient surplus area shall be applied under time, place, and manner restrictions determined necessary by the commission to protect the soil fertility, crop vitality, and the waters within the state.

(d) Except as provided in subsection (e) of this section:

(1)(A) Only a certified nutrient applicator may apply a nutrient application within a nutrient surplus area.

(B) In areas outside nutrient surplus areas, nutrient applicators may not be required to be certified; and

(2)(A) Nutrient application within a nutrient surplus area shall be documented by the nutrient applicator in a method acceptable to the commission.

(B) This documentation shall be maintained by the landowner and the nutrient applicator.

(C) The information collected in furtherance of this subchapter shall not be public record.

(e)(1) Designated nutrient application within a nutrient surplus area on residential lands of two and one-half (2 ½) acres or less shall be applied at a rate not to exceed the protective rate and in a manner acceptable to the commission and may be performed by the landowner or resident.

(2) In such instances, the landowner or resident shall not be required to be a certified nutrient applicator but shall maintain the required documentation.

(f) Application of poultry litter to soils or associated crops within a nutrient surplus area shall be done in accordance with a nutrient management plan or poultry litter management plan after January 1, 2007.

History. Acts 2003, No. 1061, § 1; 2005, No. 1871, § 2; 2005, No. 2294, § 1.

Publisher's Notes. Acts 2003, No. 1061, § 1 became effective by its own terms on January 1, 2004.

Amendments. The 2005 amendment

by No. 1871 added (b) and (c) and redesignated the remaining subdivisions accordingly.

The 2005 amendment by No. 2294 added (f).

15-20-1107. Nutrient management plan.

(a)(1) Nutrient management plans shall be approved by the board of directors of the conservation district where a majority of the land to which the plan applies is located.

(2) The person requesting a nutrient management plan may appeal the plan's disapproval or any of the plan's provisions to the Executive Director of the Arkansas Natural Resources Commission.

(b) In considering the approval of a nutrient management plan, a conservation district board of directors and the Arkansas Natural Resources Commission shall consider the plan's provision for:

- (1) Soil nutrient testing;
- (2) The level of nutrients contained in the nutrient source;
- (3) Nutrient application rates, including the methodology utilized in determining the rate;
- (4) Crops being grown, soil type, geology, hydrology, and other physical characteristics of land on which the nutrient will be applied;
- (5) The manner and timing of nutrient application;
- (6) The method for keeping application records contained in the plan; and
- (7) The qualifications of the person developing the plan.

(c) If the land application of a designated nutrient within a nutrient surplus area is a part of a process regulated under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or other similar federal or state law and the permit contains conditions regulating the application of the designated nutrient acceptable to the commission, then the permit shall serve as the nutrient management plan.

(d) An approved plan shall constitute a permit to apply nutrients consistent with the plan.

History. Acts 2003, No. 1061, § 1; 2005, No. 1871, § 3.

Publisher's Notes. Acts 2003, No. 1061, § 1 became effective by its own terms on January 1, 2004.

Amendments. The 2005 amendment

added (a); redesignated former (a) and (b) as present (b) and (c); added (d); and, in present (b), inserted "a conservation district board of directors and" preceding "the Arkansas Soil and Water Conservation Commission."

15-20-1108. Poultry litter management plan.

(a)(1) Poultry litter management plans shall be approved by the board of directors of the conservation district where a majority of the land to which the plan applies is located.

(2) The person requesting a poultry litter management plan may appeal the plan's disapproval or any of the plan's provisions to the Executive Director of the Arkansas Natural Resources Commission.

(b)(1) Poultry feeding operations within a surplus nutrient area shall develop and implement a poultry litter management plan acceptable to the Arkansas Natural Resources Commission.

(2) The person that develops the poultry litter management plan shall have obtained certification from the commission in planning.

(3) If the commission determines it to be beneficial, the poultry litter management plan may be a part of a nutrient management plan.

(c) At a minimum, the poultry litter management plan shall contain a:

(1) Periodic poultry litter nutrient content analysis component;

(2) Poultry litter utilization component providing for the proper utilization of the litter produced, including provisions ensuring that:

(A) Land application within a nutrient surplus area is in accordance with a nutrient management plan or at a rate not to exceed the protective rate;

(B) Land application outside a nutrient surplus area is in a method and at a rate acceptable to the commission; and

(C) Litter not land-applied is converted to a nonnutrient use or other use acceptable to the commission; and

(3) Records component that requires the owner of the poultry feeding operation to maintain sufficient records at the site of the poultry feeding operation to determine poultry litter utilization and compliance with the other portions of the poultry litter management plan.

(d) The commission may accept a plan or permit prepared to comply with federal law as a poultry litter management plan if the plan or permit substantially meets the requirements of this section.

(e) An approved plan shall constitute a permit to apply nutrients consistent with the plan.

History. Acts 2003, No. 1061, § 1; 2005, No. 1871, § 4.

Publisher's Notes. Acts 2003, No. 1061, § 1 became effective by its own terms on January 1, 2004.

Amendments. The 2005 amendment added (a) and redesignated the remaining subdivisions accordingly; and added (e).

15-20-1109. Sale or transfer of litter.

(a) Upon sale or transfer of poultry litter from a poultry feeding operation within a nutrient surplus area to any user, the poultry feeding operation shall not be responsible for the ultimate utilization of the poultry litter.

(b) Any person receiving poultry litter from a poultry feeding operation within a nutrient surplus area shall utilize the poultry litter in compliance with the poultry litter management plan or other method of utilization that complies with the requirements of this subchapter.

History. Acts 2003, No. 1061, § 1. 1061, § 1 became effective by its own
Publisher's Notes. Acts 2003, No. terms on January 1, 2004.

15-20-1110. Litter utilization committee.

(a) In nutrient surplus areas, the Arkansas Natural Resources Commission shall activate a litter utilization committee to facilitate utilization or removal of excess litter.

(b) The Executive Director of the Arkansas Natural Resources Commission shall appoint a committee composed of poultry feeding operators, commission staff, and other persons knowledgeable in litter management.

(c)(1) The committee shall consider methods of removal, valuation of the litter, and avenues of distribution of litter.

(2) Alternative uses shall include adequate compensation to poultry feeding operations for the value of the litter.

History. Acts 2003, No. 1061, § 1. 1061, § 1 became effective by its own
Publisher's Notes. Acts 2003, No. terms on January 1, 2004.

15-20-1111. Implementation.

(a)(1) The Arkansas Natural Resources Commission may develop all regulations necessary to implement this subchapter.

(2) Regulations shall be adopted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) The commission may delegate portions of the program for implementation to the Executive Director of the Arkansas Natural Resources Commission or conservation districts, or both.

(c)(1) The commission may defer the requirements of §§ 15-20-1106 — 15-20-1108 for up to two (2) years after declaration as a nutrient surplus area to allow the development of nutrient management plans and poultry litter management plans and implementation of alternative use plans in order that persons affected may come into compliance with this subchapter.

(2) The commission may further defer the requirements of §§ 15-20-1106 — 15-20-1108 if it determines that there is no alternative use for litter or there are no readily available, affordable alternative nutrient supplies for which litter has been used.

History. Acts 2003, No. 1061, § 1. 1061, § 1 became effective by its own
Publisher's Notes. Acts 2003, No. terms on January 1, 2004.

15-20-1112. Enforcement.

(a)(1) Agents of the Arkansas Natural Resources Commission or a conservation district may enter on private property to determine compliance with this subchapter.

(2)(A) Entry shall not occur without prior notification of the owner.

(B) Notice shall be given to the owner, operator, or agent in charge of the property at least seventy-two (72) hours before entry.

(3) Documentation of biosecurity measures taken and biosecurity certification received by an inspection agent of the Arkansas Natural Resources Commission or by a conservation district officer, including a biosecurity log book, shall be available to the owner upon request.

(4) Upon notice of disease outbreak by the Arkansas Livestock and Poultry Commission, inspection under this subchapter shall be automatically suspended until notification by the Arkansas Livestock and Poultry Commission that it is safe to resume inspections.

(b) The process for the imposition of administrative penalties under § 15-20-1113 shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2003, No. 1061, § 1; 2005, No. 1871, § 5.

Publisher's Notes. Acts 2003, No. 1061, § 1 became effective by its own terms on January 1, 2004.

Amendments. The 2005 amendment inserted "or a conservation district" in (a)(1); deleted "If the entry is to a facility where poultry is regularly kept" in

(a)(2)(A); in (a)(2)(B), inserted "operator, or agent in charge of the property" and substituted "seventy-two (72)" for "twenty-four (24)"; inserted "of the Arkansas Soil and Water Conservation Commission or by a conservation district officer" in (a)(3); inserted "under § 15-20-1113" in (b); and deleted former (c).

15-20-1113. Administrative penalties.

(a) The Arkansas Natural Resources Commission may impose administrative penalties not to exceed two thousand five hundred dollars (\$2,500) per violation against any person who violates the requirements of this subchapter.

(b)(1) Penalties collected shall be deposited in the Arkansas Water Development Fund and used in furtherance of the nutrient management program, including provisions of this subchapter.

(2) Penalties collected shall be cash funds when received by the Treasurer of State and shall not be deposited in or deemed to be a part of the State Treasury for the purposes of:

(A) Arkansas Constitution, Article 5, § 29;

(B) Arkansas Constitution, Article 16, § 12;

(C) Arkansas Constitution, Amendment 20; or

(D) Any other constitutional or statutory provision.

(c) If a person against whom an administrative penalty has been imposed by the commission as authorized in this section fails to pay the penalty to the commission, the commission may file an action to collect the administrative penalty in the circuit court of the county in which the poultry feeding operation is located.

History. Acts 2003, No. 1061, § 1. 1061, § 1 became effective by its own
Publisher's Notes. Acts 2003, No. terms on January 1, 2004.

15-20-1114. No conflict with Arkansas Water and Air Pollution Control Act.

(a)(1) This subchapter shall not supersede the requirement that liquid animal waste management systems comply with the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or regulations adopted under the act.

(2) This subchapter shall not supersede the requirements of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., for waste disposal systems utilizing land application as a part of the waste disposal process.

(b) Except as provided in subsection (a) of this section, nutrient and litter management activities conducted in compliance with this subchapter shall not be subject to regulation under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or regulations adopted under the act.

(c)(1) The Arkansas Natural Resources Commission may determine that certain nutrient and litter-management activities regulated under the provisions of this subchapter are not in compliance with the subchapter and thus constitute placing sewage, industrial waste, or other wastes in a location where it is likely to cause pollution to the waters within the state.

(2) The nutrient and litter-management activities so determined shall be subject to regulation under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., and regulations adopted under the act.

History. Acts 2003, No. 1061, § 1. 1061, § 1 became effective by its own
Publisher's Notes. Acts 2003, No. terms on January 1, 2004.

SUBCHAPTER 12 — SURPLUS NUTRIENT REMOVAL INCENTIVES ACT

SECTION.	SECTION.
15-20-1201. Title.	15-20-1205. Application and approval procedure — Administration.
15-20-1202. Definitions.	
15-20-1203. Cost share.	
15-20-1204. Application of transported litter.	15-20-1206. Source of program money.

Effective Dates. Acts 2007, No. 532, § 2: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that lawsuits concerning poultry litter have created a crisis in poultry litter distribution in Arkansas; that incentives for transportation of poultry litter will provide immediate relief to both Arkansas poultry producers and Arkansas poultry litter applicators; and that this act is immediately necessary because many poultry litter applications are made once a year and any delay in transportation will further exacerbate the already serious crisis. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-20-1201. Title.

This subchapter shall be known and may be cited as the "Surplus Nutrient Removal Incentives Act".

History. Acts 2007, No. 532, § 1.

15-20-1202. Definitions.

As used in this subchapter:

(1) "Litter" means byproducts associated with the confinement of poultry, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof; and

(2) "Nutrient surplus area" means an area declared a nutrient surplus area under § 15-20-1104.

History. Acts 2007, No. 532, § 1.

15-20-1203. Cost share.

(a)(1) For the purchase and transportation of surplus litter from any nutrient surplus area to be used or disposed of within Arkansas but outside nutrient surplus areas and outside the watersheds listed in subdivision (a)(2) of this section, the Arkansas Natural Resources Commission may provide cost share incentives to natural persons, partnerships, and corporations in an amount not to exceed fifteen dollars (\$15.00) from the Arkansas Water Development Fund for each ton of surplus litter purchased and transported.

(2) Surplus litter removed from a nutrient surplus area under this subchapter may not be applied to land in the following watersheds as defined by the National Datasets for Natural Resource Analysis of the National Resources Conservation Service of the United States Department of Agriculture:

- (A) Upper Frog Bayou, Hydrologic Unit Code 1111020104;
- (B) Lower Frog Bayou, Hydrologic Unit Code 1111020105;
- (C) Lower Mulberry River, Hydrologic Unit Code 1111020108;
- (D) Middle Mulberry River, Hydrologic Unit Code 1111020107;
- (E) White Oak Creek-Arkansas River, Hydrologic Unit Code 1111020109;
- (F) Headwaters Mulberry River, Hydrologic Unit Code 1111020106;
- (G) Horsehead Creek, Hydrologic Unit Code 1111020202;
- (H) Spadra Creek, Hydrologic Unit Code 1111020203;

- (I) Headwaters Buffalo River, Hydrologic Unit Code 1101000502;
- (J) Little Buffalo River, Hydrologic Unit Code 1101000501;
- (K) Upper Big Piney Creek, Hydrologic Unit Code 1111020206;
- (L) Little Piney Creek, Hydrologic Unit Code 1111020207;
- (M) Lower Big Piney Creek, Hydrologic Unit Code 1111020208;
- (N) Headwaters Crooked Creek, Hydrologic Unit Code 1101000309;
- (O) Clear Creek-Crooked Creek, Hydrologic Unit Code 1101000308;
- (P) Outlet Crooked Creek, Hydrologic Unit Code 1101000310;
- (Q) Richland Creek-Buffalo River, Hydrologic Unit Code 1101000503;
- (R) Bear Creek-Buffalo River, Hydrologic Unit Code 1101000504;
- and
- (S) Outlet Buffalo River, Hydrologic Unit Code 1101000505.

(b) Cost share funds shall be available to a natural person, partnership, or corporation that:

(1) Purchases surplus litter from a poultry feeding operation in a nutrient surplus area registered under the Arkansas Poultry Feeding Operations Registration Act, § 15-20-901 et seq.; and

(2) Transports or arranges for the transportation of the surplus litter outside the nutrient surplus areas to an area within Arkansas but outside the watersheds listed in subdivision (a)(2) of this section.

History. Acts 2007, No. 532, § 1.

15-20-1204. Application of transported litter.

Litter that is transported from a nutrient surplus area and then land applied shall be applied in a manner consistent with soil test recommendations.

History. Acts 2007, No. 532, § 1.

15-20-1205. Application and approval procedure — Administration.

(a) The Arkansas Natural Resources Commission shall promulgate rules necessary to administer the cost share program under this subchapter.

(b)(1) The commission may charge a reasonable application fee to process cost share applications.

(2) All fees received under subdivision (b)(1) of this section shall be deposited into the Arkansas Water Development Fund.

History. Acts 2007, No. 532, § 1.

15-20-1206. Source of program money.

The Arkansas Water Development Fund may be used to finance cost share under this subchapter.

History. Acts 2007, No. 532, § 1.

**SUBCHAPTER 13 — ARKANSAS WATER, WASTE DISPOSAL, AND POLLUTION
ABATEMENT FACILITIES FINANCING ACT OF 2007**

SECTION.

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SECTION.

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15-20-1301. Title.

This subchapter shall be known and may be cited as the “Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2007”.

History. Acts 2007, No. 631, § 1.

15-20-1302. Definitions.

As used in this subchapter:

(1) “Aquatic resources” means ecological functions, services, and values provided by the waters of the United States that are subject to compensatory mitigation pursuant to Department of the Army permits under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and Sections 9 and 10 of the Rivers and Harbors Act, 33 U.S.C. §§ 401 and 403, or other federal law requiring mitigation;

(2) “Bonds” means any bonds, notes, interim certificates, or other evidences of indebtedness;

(3) “Debt service” means principal, interest, redemption premiums, if any, and trustee’s fees, paying agent’s fees, dissemination agent’s fees, and like servicing fees relative to a bond;

(4) “Develop” means to plan, design, construct, acquire by purchase or by eminent domain, own, operate, rehabilitate, lease as lessor or

lessee, enter into lease-purchase agreements with respect to, lend, make grants in respect of, or install or equip any lands, buildings, improvements, machinery, equipment, or other properties of whatever nature, real, personal, or mixed;

(5) "Drainage" means the removal or diversion of water from lands through natural or artificial means;

(6) "Federal Deposit Insurance Corporation" means the Federal Deposit Insurance Corporation or its successor that insures commercial banks;

(7) "Flood control" means:

(A) Drainage, levee, and flood prevention improvements for protection from water-induced damages;

(B) Adjustments in land use and facilities designed to reduce flood damage from overflow or backwater due to major storms; and

(C) Facilities designed to collect, contain, or convey water within natural watercourses or other waterways;

(8) "General revenues of the state" means the revenues described and enumerated in § 19-6-201 of the Revenue Classification Law, § 19-6-101 et seq., or in any successor law;

(9) "Irrigation" means the production or transportation of water for agricultural uses through artificial or natural conveyances for watering crops or other agricultural products;

(10) "Local entity" means any nonprofit corporation or any county, municipality, conservation district, improvement district, drainage district, irrigation district, levee district, regional water distribution district, public facilities board, public water authority, rural development authority, solid waste authority, regional wastewater treatment district, regional solid waste management district, rural water association, or school district in the state or any agency or instrumentality of any of the foregoing, or any agency or instrumentality of the state, including the Arkansas Natural Resources Commission;

(11) "Nationally recognized rating agency" means Moody's Investors Service, Inc., Standard & Poor's, Fitch Ratings, or any other nationally recognized rating agency approved by the State Investing Office;

(12) "Person" means any local entity or any individual, corporation, trust, limited liability company, or partnership;

(13) "Pollution abatement" means the reduction, prevention, recycling, control, or elimination by appropriate methods of contamination or pollution, or other alteration of the physical, chemical, or biological properties, of any land or waters of the state, or of such discharge of any liquid, gaseous, or solid substance as will or is likely to create a nuisance or render any land or waters of the state harmful or detrimental or injurious to public health, safety, or the welfare of individuals, to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life;

(14) "Prior act" means Acts 1997, No. 607, as now or hereafter amended;

(15) "Program" means the Water, Waste Disposal, and Pollution Abatement Facilities Development Program of the Arkansas Natural Resources Commission under which the commission will fund loans or grants to local entities or persons;

(16)(A) "Project" or "projects" means any lands, buildings, improvements, machinery, equipment, or other property, real, personal, or mixed, or any combination thereof, and programs using such property, developed in pursuance of the purposes of this subchapter, including without limitation:

(i) The production, impoundment, treatment, and transportation of water;

(ii) The collection, treatment, and disposition of waste;

(iii) Pollution abatement programs;

(iv) Drainage or flood control facilities;

(v) Irrigation facilities; and

(vi) The preservation and development of wetlands and aquatic resources.

(B) "Project" or "projects" includes projects for:

(i) Agricultural, administrative, research, residential, recreational, commercial, or industrial purposes;

(ii) The use and benefit of local entities, the commission, and other persons; and

(iii) Facilities and improvements that are necessary, ancillary, or related to a project;

(17) "Project costs" means all or any part of the administrative costs of the commission in connection with the program and the costs of developing any project, costs incidental or appropriate thereto, including without limitation all costs to the commission associated with the development or operation of any project in a supervisory capacity, and costs incidental or appropriate to the financing thereof, including without limitation capitalized interest, costs of issuance of and appropriate reserves for the bonds, loan or commitment fees, loan or grant administration fees, and costs for engineering, legal, and other administrative and consultant services;

(18) "State Investing Office" means the Treasurer of State for the investment of any funds established on the books of the State Treasury, and the commission for the investment of any funds held outside the State Treasury;

(19) "Waste" means a liquid or solid produced as an undesirable by-product of any activity;

(20) "Water" means any waters of the state, including surface water and ground water; and

(21) "Wetlands" means land that:

(A) Has a predominance of hydric soils;

(B) Is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(C) Under normal circumstances supports a prevalence of the hydrophytic vegetation typically adapted for life in saturated soil conditions.

History. Acts 2007, No. 631, § 1; 2009, substituted “the hydrophytic vegetation typically adapted for life in saturated soil conditions” for “the vegetation” in (21).
No. 481, § 5.

Amendments. The 2009 amendment

15-20-1303. Authority to issue bonds.

(a)(1) The Arkansas Natural Resources Commission is hereby authorized to issue bonds of the State of Arkansas to be known as “State of Arkansas Water, Waste Disposal, and Pollution Abatement Facilities General Obligation bonds”, in total principal amount not to exceed three hundred million dollars (\$300,000,000), for the purposes of this subchapter.

(2) However, no more than one hundred million dollars (\$100,000,000) of bonds shall be issued to finance projects for irrigation facilities.

(3) The bonds may be issued in one (1) or more series as required under this subchapter.

(b) Unless the General Assembly authorizes a greater principal amount to be issued during a fiscal biennium, the total principal amount of bonds to be issued during any fiscal biennium shall not exceed sixty million dollars (\$60,000,000).

(c)(1) Before any bonds may be issued during a fiscal biennium, the commission shall submit to the Governor a written plan:

(A) Setting forth criteria to be used by the commission in choosing the projects to be financed with the proceeds derived from the sale of the bonds or the programs for which funds may be provided by the commission to finance projects, or both; and

(B) Requesting authorization for the projected maximum principal amount of bonds required to be issued in the fiscal biennium.

(2) Upon receipt of the written plan, the Governor shall:

(A) Confer with the Chief Fiscal Officer of the State concerning whether the annual amount of general revenue funds required to be set aside from the general revenues of the state under the Revenue Stabilization Law, § 19-5-101 et seq., for payment of debt service requirements in connection with the bonds during either year of the fiscal biennium in which the bonds are to be issued would require moneys from the general revenues of the state that would work undue hardship upon any agency or program supported from the general revenues of the state under the provisions of the Revenue Stabilization Law, § 19-5-101 et seq.; and

(B) Upon compliance with subdivision (c)(2)(A) of this section, obtain the advice of:

(i) The Joint Budget Committee if the General Assembly is in session; or

(ii) The Legislative Council if the General Assembly is not in session.

(d)(1) If the Governor deems it to be in the public interest, he or she by proclamation shall authorize the commission to proceed with the issuance of the bonds in one (1) or more series up to the maximum principal amount for the fiscal biennium approved by the Governor.

(2)(A) If the Governor refuses to give his or her approval for the issuance of the bonds by declining to issue a proclamation approving the issuance, he or she shall promptly notify the commission in writing and the bonds shall not be issued.

(B) The commission may resubmit a request to the Governor for the approval of the issuance of the bonds.

(C) The issue as resubmitted to the Governor shall be dealt with in the same manner as provided for the initial request for authority to issue the bonds.

History. Acts 2007, No. 631, § 1.

15-20-1304. Terms and characteristics of bonds.

(a) The bonds shall be issued in series in amounts sufficient to finance or refinance all or any part of project costs with the respective series to be designated in alphabetical order or by the year in which issued, or both.

(b)(1) Each series of bonds shall have the date as the Arkansas Natural Resources Commission determines and shall mature or be subject to mandatory sinking fund redemption as determined by the commission over a period ending not later than thirty-five (35) years after the date of the bonds of each series.

(2) Pending the issuance of bonds under this subchapter, the commission may issue temporary notes maturing not more than five (5) years from the date of issuance to be exchanged for or paid from the proceeds of bonds when the bonds are issued.

(c)(1) Each series of bonds shall bear interest whether or not subject to federal income taxation at the rate or rates accepted by the commission.

(2) Interest shall be payable at such times as the commission determines.

(d) The commission shall determine:

(1) The form of the bonds;

(2) The denomination of the bonds;

(3) Whether the bonds may be exchanged for bonds of another form or denomination bearing the same rate of interest and date of maturity;

(4) Whether the bonds may be payable within or without the state;

(5) Whether the bonds may be subject to redemption prior to maturity, including:

(A) The manner of redemption; and

(B) The redemption prices; and

(6) Any other terms and conditions of the bonds.

(e) The bonds shall have all the qualities of negotiable instruments or securities under the laws of the state, subject to the provision for registration of ownership.

History. Acts 2007, No. 631, § 1.

15-20-1305. Purpose of bonds.

Bonds issued under this subchapter shall be issued to finance on a temporary or permanent basis or to refinance and develop one (1) or more projects, and the proceeds of the bonds shall be applied to the payment of project costs and the costs and expenses of issuance of the bonds, or in connection with a project refinancing, the repayment of indebtedness incurred to pay project costs, or for refunding of bonds as provided in § 15-20-1313.

History. Acts 2007, No. 631, § 1.

15-20-1306. Resolutions and trust indentures.

(a)(1) The bonds shall be authorized by resolution of the Arkansas Natural Resources Commission.

(2) Each resolution shall contain the terms, covenants, and conditions deemed desirable for the bonds, including without limitation conditions pertaining to:

(A) The establishment and maintenance of funds and accounts;

(B) The deposit and investment of revenues and of bond proceeds; and

(C) The rights and obligations of the state, its officers and officials, the commission, and the registered owners of the bonds.

(3) The resolution of the commission may provide for the execution and delivery by the commission of one (1) or more trust indentures with one (1) or more banks or trust companies located within or without the state, containing any of the terms, covenants, and conditions stated in subdivision (a)(2) of this section.

(4) A trust indenture shall be binding upon the state and its agencies, officers, and officials to the extent set forth in this subchapter.

(b) Any resolution or trust indenture adopted or executed under this section shall provide that power is reserved to:

(1) Apply to the payment of debt service on the bonds issued or secured under all or any part of the revenues that may be derived from any project financed by the bonds or financed by the commission in some other manner; and

(2) To the extent of revenues that the commission elects to apply to debt service, to release from any requirement of the resolution or trust indenture other revenues and resources of the state, including without limitation the general revenues of the state required to be transferred under § 15-20-1311.

History. Acts 2007, No. 631, § 1.

15-20-1307. Form of bond — Signatures.

(a) Each bond shall:

(1) Be signed with the manual or facsimile signatures of the Governor, the Chair of the Arkansas Natural Resources Commission, and the Treasurer of State; and

(2) Have affixed, imprinted, or lithographed on the bond the Great Seal of the State of Arkansas.

(b) Interest coupons attached to the bonds, if any, shall be signed with the facsimile signature of the Treasurer of State.

(c) Delivery of the bonds and coupons so executed shall be valid notwithstanding any change in persons holding such offices occurring after the bonds have been executed.

History. Acts 2007, No. 631, § 1.

15-20-1308. Sale of bonds.

(a) The bonds may be sold:

(1) Either at public or private sale in a manner and upon such terms as the Arkansas Natural Resources Commission determines to be reasonable and expedient for the purposes for which the commission was created; and

(2) At the price the commission determines acceptable, including sale at a discount.

(b) The commission may employ administrative agents, fiscal agents, underwriters, architects, accountants, engineers, and legal counsel and may pay them reasonable compensation from the proceeds of the bonds.

(c) The fees of any trustee or paying agent as well as the costs of publication of notices and of printing of the bonds, official statements, and other documents relating to the sale of the bonds, the fees of any rating agency, and other reasonable costs of issuing and selling the bonds incurred by the commission may be paid from the proceeds of the bonds.

History. Acts 2007, No. 631, § 1.

15-20-1309. Proceeds of bonds.

(a) The proceeds from the sale of the bonds, together with all revenues derived by the Arkansas Natural Resources Commission from any project financed or refinanced under this subchapter and appropriated, allocated, or otherwise set aside by the commission for the payment of the bonds and from any other project and appropriated, allocated, or otherwise set aside by the commission for the payment of the bonds, shall be deposited by the recipient thereof, as received, into trust funds either established in the State Treasury, or into accounts established outside the State Treasury in the name of the commission, to accomplish the purposes of this subchapter, in amounts or portions as

set forth in the resolution or trust indenture authorizing or securing the bonds issued to finance or refinance the development of projects.

(b)(1) There is established as a trust fund in the State Treasury an account designated as the "Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2007 Bond Fund" that is being created to provide for payment of all or a part of the debt service in connection with bonds issued under this subchapter.

(2)(A) The Treasurer of State shall establish separate accounts and subaccounts within the fund to correspond to the applicable series of bonds.

(B) In addition, there may be created in the State Treasury such other funds, accounts, or subaccounts as the commission may determine to be necessary to accomplish the purposes of this subchapter.

(c)(1) All procedures and methods for the application of proceeds of any series of bonds to the financing or refinancing of project costs shall be set forth in writing.

(2) The writings shall be maintained as a part of the records of the commission.

(3) The procedures and methods may include without limitation:

(A) Development of projects to be owned, operated, and maintained by the commission;

(B) Grants to local entities and the commission;

(C) Loans to local entities or persons or the purchase of bonds or other general or special obligation debt of local entities;

(D) Development of projects to be leased to or operated by local entities;

(E) Development of projects to be purchased at one (1) time or by installment purchase by local entities;

(F) Establishment of funds, including revolving funds for the lending of money to persons to be repaid into the funds for the development of projects;

(G) Matching of proceeds of bonds with moneys provided by local entity or other persons;

(H) Matching of moneys provided pursuant to other laws, including § 15-22-501 et seq.; the Arkansas Water Resources Cost Share Finance Act, § 15-22-801 et seq.; The Water, Sewer, and Solid Waste Management Systems Finance Act of 1975, § 14-230-101 et seq.; and § 15-22-1101 et seq.; and

(I) Establishment of funds to refund or refinance bonds issued under this subchapter, bonds issued under the prior act, and the bonds or other debt of local entities that were incurred for the purpose of paying project costs.

(d) Any arrangements undertaken pursuant to subsection (c) of this section whereby a local entity will administer funds composed, in whole or in part, of proceeds of bonds shall include provision for the auditing no less than annually of the funds.

(e) The proceeds from the sale of the bonds, together with all revenues derived by the commission from any project financed or

refinanced under this subchapter or from any other project, that are appropriated, allocated, or otherwise set aside by the commission for the payment of the bonds, may be invested and reinvested by the State Investing Office in any of the following:

(1) Direct obligations of the United States, including obligations issued or held in book-entry form on the books of the United States Department of the Treasury or obligations that are unconditionally guaranteed as to principal and interest by the United States;

(2) Bonds, debentures, notes, or other evidences of indebtedness issued or guaranteed by any agencies of the United States Government that are backed by the full faith and credit of the United States;

(3) Senior debt obligations issued or guaranteed by agencies of the United States Government that are non-full faith and credit agencies;

(4) Money market funds investing exclusively in the investments described in subdivision (e)(1), (2), or (3) of this section;

(5) Certificates of deposit providing for deposits secured at all times by collateral described in subdivision (e)(1), (2), or (3) of this section if:

(A) The certificates of deposit are issued by commercial banks whose deposits are insured by the Federal Deposit Insurance Corporation and whose collateral is held by a third party; and

(B) The State Investing Office or its assigns have a perfected first security interest in the collateral;

(6) Certificates of deposit, savings accounts, deposit accounts, or money market deposits, all of which are fully insured by the Federal Deposit Insurance Corporation;

(7) Bonds or notes issued by the state or any municipality, county, school district, community college district, or regional solid waste management district in the state or any agency or instrumentality of the state;

(8) Investment agreements with financial institutions or insurance companies that are rated in one (1) of the two (2) highest rating categories of a nationally recognized rating agency;

(9) Repurchase agreements providing for the transfer of securities from a dealer bank or securities firm to the State Investing Office and the transfer of cash from the State Investing Office to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the State Investing Office in exchange for the securities at a specified date if the repurchase agreements satisfy the following criteria:

(A) Repurchase agreements must be between the State Investing Office and a dealer bank or securities firm described as follows:

(i) Dealers with at least one hundred million dollars (\$100,000,000) in capital; or

(ii) Banks whose deposits are insured by the Federal Deposit Insurance Corporation; and

(B) The written repurchase agreement contract must include the following:

(i) Securities that are acceptable for transfer are those listed in subdivision (e)(1),(2), or (3) of this section;

(ii) The term of the repurchase agreement may be up to thirty (30) days;

(iii) The collateral must be delivered to the State Investing Office, the trustee if the trustee is not supplying the collateral, or to a third party acting as agent for the trustee if the trustee is supplying the collateral, before or at the time of the payment and perfection by possession of certificated securities; and

(iv)(a) The securities must be valued weekly, market-to-market at current market price plus accrued interest.

(b) The value of collateral must be equal to one hundred three percent (103%) of the amount of cash transferred by the State Investing Office to the dealer bank or security firm under the repurchase agreement plus accrued interest.

(c) If the value of securities held as collateral declines below one hundred three percent (103%) of the value of the cash transferred by the State Investing Office, then additional cash, acceptable securities, or a combination of cash and securities must be transferred and held by the State Investing Office; and

(10) Any other investment authorized by state law.

History. Acts 2007, No. 631, § 1.

15-20-1310. Full faith and credit of state pledged to repay bonds.

The bonds shall be the direct general obligations of the state for the payment of debt service on which the full faith and credit of the state are irrevocably pledged so long as any such bonds are outstanding. The bonds shall be payable from the general revenues of the state, and the amount of general revenues of the state as is necessary and shall remain pledged to the payment of debt service on the bonds.

History. Acts 2007, No. 631, § 1.

15-20-1311. Payment of debt service on the bonds.

(a)(1) On or before the commencement of each fiscal year, the Chief Fiscal Officer of the State shall determine the estimated amount required for payment of all or a part of the debt service on the bonds issued under this subchapter during the fiscal year and deduct from the estimated moneys to be available to the Arkansas Natural Resources Commission from other sources to determine what amount of general revenues of the state will be required.

(2) The Chief Fiscal Officer of the State shall certify the estimated amount to the Treasurer of State.

(3) The Treasurer of State shall then make monthly transfers from the State Apportionment Fund to the Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2007 Bond Fund of the amount of general revenues of the state required to pay the maturing debt service on bonds issued under this subchapter.

(b)(1) The obligation to make monthly transfers of general revenues of the state from the State Apportionment Fund to the Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2007 Bond Fund shall constitute a first charge against the general revenues of the state prior to all other uses to which the general revenues of the state are devoted, either under present law or under any laws that may be enacted in the future.

(2) However, to the extent other general obligation bonds of the state have been issued or may subsequently be issued, all general obligation bonds shall rank on a parity of security with respect to payment from general revenues of the state.

(c) Moneys credited to the Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2007 Bond Fund shall be used only to pay debt service on the bonds, either at maturity or upon redemption prior to maturity, and for such purposes the Treasurer of State is designated disbursing officer to administer such funds in accordance with this subchapter.

(d) Moneys in the Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2007 Bond Fund over and above the amount necessary to ensure the prompt payment of debt service on the bonds and the establishment and maintenance of a reserve fund, if any, may be used for the redemption of bonds prior to maturity under the provisions pertaining to redemption prior to maturity, as set forth in the resolution or trust indenture authorizing or securing the bonds.

History. Acts 2007, No. 631, § 1; 2009, No. 481, § 6. Pollution Abatement Facilities Financing Act of 2007 Bond Fund” for “Bond Fund”

Amendments. The 2009 amendment substituted “Water, Waste Disposal, and in (a)(3), (b)(1), (c), and (d); and made a minor capitalization change.

15-20-1312. Bonds exempt from state, county, and municipal taxes.

Bonds and the interest on the bonds issued under this subchapter are exempt from state, county, and municipal taxes, including income taxes, inheritance taxes, and property taxes. The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of bank funds, fiduciary funds, insurance company funds, trust funds, and public funds.

History. Acts 2007, No. 631, § 1.

15-20-1313. Refunding bonds.

(a)(1) Bonds may be issued under this subchapter to refund any outstanding bonds issued under this subchapter or to refund any outstanding bonds of the Arkansas Natural Resources Commission issued pursuant to the prior act.

(2) Bonds issued under this section:

(A) Do not require the commission to submit a written plan to the Governor under § 15-20-1303(c); and

(B) Are not subject to the requirements for the approval and proclamation of the Governor under § 15-20-1303(d).

(b)(1) The refunding bonds may be either sold for cash or delivered in exchange for the outstanding obligations.

(2) If sold for cash, the proceeds may be applied to the payment of the obligations refunded or may be deposited in irrevocable trust for the retirement of the outstanding obligations either at maturity or on an authorized redemption date.

(c)(1) Refunding bonds shall in all respects be authorized, issued, and secured as provided for the bonds being refunded and shall have all the attributes of the refunded bonds.

(2) To the extent that the refunding bonds are not in a greater principal amount than the outstanding principal amount of the bonds being refunded, the principal amount of the refunding bonds shall not be subject to the limit of three hundred million dollars (\$300,000,000) set forth in § 15-20-1303(a) or the limit of sixty million dollars (\$60,000,000) set forth in § 15-20-1303(b).

(d) The resolution or trust indenture under which the refunding bonds are issued shall provide that any refunding bonds shall have the same priority of payment as the obligations refunded.

History. Acts 2007, No. 631, § 1.

15-20-1314. Additional powers of the Arkansas Natural Resources Commission.

In addition to powers conferred under other laws, the Arkansas Natural Resources Commission may take appropriate action to carry out the purposes of this subchapter, including the power to:

(1) Develop projects;

(2) Operate and maintain projects;

(3) Acquire absolute title to and use for any purpose and at any place, water stored in any reservoir or other impoundment;

(4) Acquire, collect, impound, store, transport, distribute, sell, furnish, and dispose of water to any person at any place;

(5) Purify, treat, and process water;

(6) Assist local entities in the preparation of their premises for the use of water furnished by the commission and to construct upon their premises project properties of any kind and in connection therewith to receive, acquire, endorse, pledge, hypothecate, and dispose of notes, bonds, and other evidences of indebtedness;

(7) Use the bed of any watercourse without adversely affecting existing riparian rights, any highway or any right-of-way, easement, or other similar property rights, or any tax-forfeited land owned or held by the state or by any political subdivision of the state;

(8) Provide loans and grants from bond proceeds or project revenues to local entities and to authorize local entities to make loans to other

persons for payment of project costs in order for the local entity receiving the funds to develop a project;

(9) Purchase with bonds proceeds or project revenues bonds or notes from a local entity in order to provide funds for payment of project costs in order for the local entity receiving the funds to develop a project and to enter into note and bond purchase agreements in connection therewith;

(10) Appropriate amounts from bond proceeds to satisfy state matching requirements for federal grants, subsidies, and revolving loan funds established by the Congress of the United States for the purpose of facilitating water, waste disposal, pollution control, abatement and prevention, drainage, irrigation, flood control, and wetlands and aquatic resources projects;

(11) Appropriate amounts from bond proceeds for the matching of moneys provided pursuant to other laws, including without limitation, § 15-22-501 et seq., the Arkansas Water Resources Cost Share Finance Act, § 15-22-801 et seq., The Water, Sewer, and Solid Waste Management Systems Finance Act of 1975, § 14-230-101 et seq., § 15-22-1101 et seq., and § 15-5-901 et seq.;

(12) Construct or cause to be constructed, lease as lessee, lease as lessor, and in any manner acquire, own, hold, maintain, operate, sell, dispose of, exchange, mortgage, or lend with respect to all or any part of any project;

(13) Acquire, own, hold, use, exercise, sell, mortgage, pledge, hypothecate, and in any manner dispose of franchises, rights, privileges, licenses, rights-of-way, and easements necessary, useful, or appropriate for the exercise of the powers or implementation of the purposes set forth in this subchapter;

(14) Sell and convey, mortgage, pledge, lease as lessor, enter into lease-purchase agreements with respect to, and otherwise dispose of all or any part of any project or other properties, tangible or intangible, including without limitation franchises, rights, privileges, licenses, rights-of-way, and easements;

(15) Have and exercise the right of eminent domain for the purpose of acquiring the fee title, an easement, a right-of-way, or any other interest or estate in lands for projects or portions of projects by the procedure now provided for condemnation by municipal corporations, § 18-15-401 et seq.;

(16) Make or accept gifts or grants of moneys, services, franchises, rights, privileges, licenses, rights-of-way, easements, or other property, real or personal or mixed;

(17) Make any contract necessary or convenient for the exercise of the powers or implementation of the purposes of this subchapter;

(18) Fix, regulate, and collect rates, fees, rents, or other charges for making any loan or commitment under this subchapter, for performing accounting and loan servicing duties relating to such loans and for the use of any properties or services furnished by the commission, and with respect thereto, the commission shall not be subject to the jurisdiction or control of the Arkansas Public Service Commission;

(19) Require audits of all accounts related to construction, operation, or maintenance of any project funded by this subchapter;

(20) Take reasonable actions necessary to ensure that debt service requirements are met;

(21) Refinance loans made by the commission from whatever source to local entities in order to develop a project;

(22) Provide loans from bond proceeds or project revenues to local entities to refinance indebtedness of the local entity incurred to develop a project;

(23) Procure insurance, letters of credit, or other credit enhancement for the bonds;

(24) Administer the program;

(25) Purchase with bond proceeds or project revenues bonds or notes from a local entity in order to provide funds to refinance indebtedness incurred by a local entity to develop a project; and

(26) Take any other action appropriate to accomplish the purposes of this subchapter.

History. Acts 2007, No. 631, § 1.

15-20-1315. No impairment of bond obligations.

(a) This subchapter constitutes a contract between the state and the registered owners of all bonds issued under this subchapter.

(b) The contract shall never be impaired, and any violation of its terms whether under purported legislative authority or otherwise shall be enjoined by the courts at the suit of any bondholder or any taxpayer.

(c) In like suit against the Arkansas Natural Resources Commission, the Treasurer of State, or other appropriate agency, officer, or official of the state, the courts shall prevent a diversion of any revenues pledged hereunder and shall compel the restoration of diverted revenues by injunction or mandamus.

(d) Without limiting any other appropriate remedy at law or in equity, a bondholder may by an appropriate action including without limitation injunction or mandamus compel the performance of all covenants and obligations of the state and its officers and officials under this subchapter.

History. Acts 2007, No. 631, § 1.

15-20-1316. No obligations until bonds issued.

This subchapter shall not create any right of any character unless the first series of bonds authorized by this subchapter has been sold and delivered.

History. Acts 2007, No. 631, § 1.

15-20-1317. No impairment of outstanding bonds.

The issuance of bonds authorized by this subchapter shall not impair or affect any outstanding bonds of the Arkansas Natural Resources Commission issued pursuant to the prior act.

History. Acts 2007, No. 631, § 1.

15-20-1318. Election.

(a)(1) Bonds shall not be issued under this subchapter except with the consent of a majority of the qualified electors of the state voting on the question in substantially the form described in this section at the 2008 General Election unless the Governor by proclamation calls a special election before the 2008 General Election.

(2) If the question is presented at the 2008 General Election, notice thereof shall be published by the Secretary of State by one (1) insertion in a newspaper of general circulation in the state at least sixty (60) days prior to the general election, and notice thereof shall be mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to the general election.

(3) If a special election is called by the Governor, the proclamation of the special election shall be made at least sixty (60) days prior to the date fixed by the proclamation for the election, and notice of the special election shall be given by publication of the proclamation by one (1) insertion in one (1) newspaper of general circulation published in each county in the state not less than thirty (30) days prior to the date of the special election.

(4) If there is no newspaper regularly published in a county, the proclamation may be published in any newspaper having a general circulation in the county.

(b) In the case of the notice or proclamation for the election, it shall not be necessary to publish this subchapter in its entirety, but the notice or proclamation shall state that it is issued to submit to the people substantially the following question:

“Shall the Arkansas Natural Resources Commission be authorized to issue General Obligation bonds under the authority of the Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing Act of 2007, for the financing and refinancing of the development of water, waste disposal, water pollution control, abatement and prevention, drainage, irrigation, flood control, and wetlands and aquatic resources projects to serve the citizens of the State of Arkansas, in total principal amount not to exceed Three Hundred Million Dollars (\$300,000,000), with no more than One Hundred Million Dollars (\$100,000,000) of such bonds to be issued to finance and refinance the development of irrigation facilities, in series from time to time in principal amounts not to exceed, without prior approval of the General Assembly, Sixty Million Dollars (\$60,000,000) in any fiscal biennium, which bonds shall be secured by a pledge of the full faith and credit of the State of Arkansas?”

(c) Whether the question is presented at a special election or at the 2008 General Election, the title of this subchapter shall be the ballot title, and there shall be printed on the ballot the proposition as stated above and the following:

“FOR Issuance of State of Arkansas Water, Waste Disposal, and Pollution Abatement Facilities General Obligation bonds _____

AGAINST Issuance of State of Arkansas Water, Waste Disposal, and Pollution Abatement Facilities General Obligation bonds _____”

(d)(1) The county boards of election commissioners of the several counties of the state shall hold and conduct the election, and each board may take action with respect to the appointment of election officials and other matters as the law requires.

(2) The vote shall be canvassed and the result declared in each county by the county boards of election commissioners.

(3) Within ten (10) days after the date of the election, the results shall be certified by the county boards of election commissioners to the Secretary of State who shall tabulate all returns received by him or her and certify to the Governor the total vote for and against the proposition submitted under this section.

(e) The result of the election shall be proclaimed by the Governor by publication one (1) time in a newspaper published in the City of Little Rock, Arkansas, and the results as proclaimed shall be conclusive unless attacked in the courts within thirty (30) days after the date of the publication.

History. Acts 2007, No. 631, § 1.

15-20-1319. Effect of election.

(a) If a majority of the qualified electors voting on the question vote for the issuance of the bonds, the commission shall proceed with the sale and the issuance of the bonds as provided in this subchapter.

(b) If a majority of the qualified electors voting on the question vote against the issuance of the bonds, the bonds authorized by this subchapter shall not be sold or issued, and this subchapter shall be of no further effect.

History. Acts 2007, No. 631, § 1.

15-20-1320. No waiver of previous authority to issue bonds.

This subchapter shall not constitute a waiver of the authority to issue bonds under the prior act or any other legislation authorizing the issuance of bonds for similar purposes.

History. Acts 2007, No. 631, § 1.

15-20-1321. Severability.

If, for any reason, any section or provision of this subchapter shall be held to be unconstitutional or invalid for any reason, such holding

shall not affect the remainder of this subchapter, but this subchapter, insofar as it is not in conflict with the Arkansas Constitution or the Constitution of the United States, shall be permitted to stand, and the various provisions of this subchapter are hereby declared to be severable for that purpose.

History. Acts 2007, No. 631, § 1.

15-20-1322. Cases involving bonds.

A case involving the validity of this subchapter or involving the bonds issued under this subchapter shall be deemed of public interest and shall be advanced by all courts and heard as a preferred cause, and all appeals from judgments or decrees rendered in such cases shall be taken within thirty (30) days after rendition of the judgment or decree.

History. Acts 2007, No. 631, § 1.

15-20-1323. Construction of subchapter.

(a) This subchapter shall be liberally construed to accomplish its purposes. This subchapter shall constitute the sole authority necessary to accomplish the purposes hereof, and to this end it shall not be necessary that the provisions of other laws pertaining to the development of public facilities and properties and the financing thereof be complied with.

(b) This subchapter shall be interpreted to supplement existing laws conferring rights and powers upon the Arkansas Natural Resources Commission, and the rights and powers set forth in this subchapter shall be regarded as alternate methods for the accomplishment of the purposes of this subchapter.

(c) Nothing set forth in this subchapter repeals or reduces the powers conferred by the prior act.

History. Acts 2007, No. 631, § 1.

CHAPTER 21

LAND

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. SURVEYS.
3. ARKANSAS COORDINATE SYSTEM.
4. ACCEPTANCE OF FEDERAL SOIL CONSERVATION ACT.
5. ARKANSAS STATE LAND INFORMATION BOARD.
6. EARTHQUAKE ACTIVITY.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 15-21-101. Restoration of General Land
Office corners.

Effective Dates. Acts 1985, No. 325, § 13: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the

event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

15-21-101. Restoration of General Land Office corners.

(a) In order to expedite the restoration of original United States General Land Office, or GLO, corners by placement of markers and monuments, a contract between certified land surveyors of this state and the Division of Land Surveys of the Arkansas Agriculture Department shall not be required.

(b) Compensation may be made to any certified surveyor who provides proof of restoration according to specifications prescribed by the State Surveyor.

History. Acts 1985, No. 325, § 10.

SUBCHAPTER 2 — SURVEYS

SECTION.

- 15-21-201. Division of Land Surveys — Creation.
- 15-21-202. Land survey advisory board — Creation — Members.
- 15-21-203. Advisory board — Organization and meetings.
- 15-21-204. Advisory board — Duties.
- 15-21-205. State Surveyor — Generally.
- 15-21-206. State Surveyor — Powers and duties.

SECTION.

- 15-21-207. Surveyors generally.
- 15-21-208. Right to enter private property.
- 15-21-209. Exchange of information.
- 15-21-210. Sale of information by division.
- 15-21-211. Abstractors unaffected.

A.C.R.C. Notes. Acts 2001, No. 1417, § 6, provided: "Transfer. (a) Effective July 1, 2001, the Division of Land Surveys of the Arkansas Geological Commission is transferred by a Type 2 transfer as provided in Arkansas Code 25-2-105 to the Office of the Commissioner of State Lands.

"(b) For purposes of this act, the Arkansas State Land Survey Department shall be considered a principal department established by Act 38 of 1971."

Acts 2001, No. 1417, § 7, provided: "Other Authority. All other statutory authority, powers, duties, functions, records, property and funds administered or provided by other support divisions within the Arkansas Geological Commission shall be transferred by a Type 2 transfer as provided in Arkansas Code 25-2-105 to the Office of the Commissioner of State Lands upon the effective date of the transfer."

Acts 2001, No. 1417, § 10, provided:

"Compliance With Other Laws. Disbursement of funds authorized by this act shall be limited to the appropriation for the agency being transferred and funds made available by law for the support of the appropriations; and the restrictions of the State Purchasing Law, the General Accounting and Budgetary Procedures Law, the Revenue Stabilization Law, the Regular Salary Procedures and Restrictions Act, or their successors, and other fiscal control laws of this state, where applicable, and regulations promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of the funds."

Acts 2001, No. 1417, § 11, provided: "Legislative Intent. It is the intent of the General Assembly that any funds disbursed under the authority of the appropriations transferred or referred to in this act shall be in compliance with the stated reasons for which this act was adopted, as evidenced by the agency requests, executive recommendations and legislative recommendations contained in the budget manuals prepared by the Department of Finance and Administration, letters, or summarized oral testimony in the official minutes of the Arkansas Legislative Council or Joint Budget Committee which relate to its passage and adoption."

Publisher's Notes. Acts 1975, No. 579, §§ 1 and 6, transferred the Division of Land Surveys and the State Surveyor to the Department of Commerce to be supervised by the Director of the Department.

Acts 1977, No. 214, §§ 1 and 6, then transferred the Division of Land Surveys and the State Surveyor to the Arkansas Geological Commission to be supervised by the State Geologist.

Effective Dates. Acts 1975 (Extended Sess., 1976), No. 1035, § 3: Jan. 27, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in Extended Session, that the standardization of mileage reimbursement for members of the state's Boards and Commissions will alleviate many discrepancies and inequities in existing laws and will allow such members to receive travel reimbursement commensurate with that paid to state employees. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of

the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 862, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1035 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1417, § 12: Apr. 9, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the fiscal year begins July 1, and it is efficient to establish the Division of Land Surveys within the Office of the Commissioner of State Lands on the same date as the fiscal year begins. If the division were transferred at a later date, the budget for the Arkansas Geological Commission and the Office of the Commissioner of State Lands would be confusing and irreparably harmed. Therefore, an emergency is declared to exist and this act being immedi-

ately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 752, § 6: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act

transfers the Division of Land Surveys in the Office of Commissioner of State Lands to the Arkansas Agriculture Department; that to effectively administer this act the transition should occur at the beginning of the next fiscal year; and that the effectiveness of this act on July 1, 2007, is essential to the operation of the agencies. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

Cross References. Arkansas Geological Survey, § 15-55-201 et seq.

15-21-201. Division of Land Surveys — Creation.

(a) There is created in the Arkansas Agriculture Department a Division of Land Surveys.

(b) The primary functions of the division shall be the establishment, maintenance, and preservation of land monuments, section corners, and other physical accessories of the United States Public Land Survey within the State of Arkansas, the field notes, plats, and other documents relating and evidencing the United States Public Land Survey, and the prescribing of general land survey regulations.

History. Acts 1973, No. 458, § 1; A.S.A. 1947, § 10-1301; Acts 2001, No. 1417, § 1; 2007, No. 752, § 2.

A.C.R.C. Notes. Acts 2001, No. 1417, § 10, provided: "Compliance With Other Laws. Disbursement of funds authorized by this act shall be limited to the appropriation for the agency being transferred and funds made available by law for the support of the appropriations; and the restrictions of the State Purchasing Law, the General Accounting and Budgetary Procedures Law, the Revenue Stabilization Law, the Regular Salary Procedures and Restrictions Act, or their successors, and other fiscal control laws of the state, where applicable, and regulations promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of the funds."

Acts 2001, No. 1417, § 11, provided: "Legislative Intent. It is the intent of the General Assembly that any funds disbursed under the authority of the appropriations transferred or referred to in this act shall be in compliance with the stated reasons for which this act was adopted, as evidenced by the agency requests, executive recommendations and legislative recommendations contained in the budget manuals prepared by the Department of Finance and Administration, letters, or summarized oral testimony in the official minutes of the Arkansas Legislative Council or Joint Budget Committee which relate to its passage and adoption."

Amendments. The 2007 amendment substituted "Arkansas Agriculture Department" for "Office of the Commissioner of State Lands" in (a).

15-21-202. Land survey advisory board — Creation — Members.

(a) There is created an Advisory Board to the Division of Land Surveys.

(b) The board shall consist of the following:

(1) One (1) person who is a professional engineer and registered professional surveyor designated by the State Board of Licensure for Professional Engineers and Professional Surveyors;

(2) One (1) person who is a registered professional surveyor designated by the Arkansas Association of Professional Surveyors;

(3) One (1) person designated by the Arkansas Realtors Association;

(4) One (1) person who is a registered professional engineer and registered professional surveyor with the Arkansas State Highway and Transportation Department designated by the State Highway Commission;

(5) One (1) person designated by the Arkansas County Judges Association;

(6) One (1) licensed abstractor designated by the Arkansas Abstractors Association; and

(7) One (1) registered professional surveyor designated by the Arkansas Forestry Commission.

(c) All members of the board shall serve for terms of six (6) years.

(d) Members of the board shall serve without compensation but may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1973, No. 458, §§ 4, 6; 1975 (Extended Sess., 1976), No. 1035, § 1; A.S.A. 1947, §§ 6-616, 10-1304, 10-1306; reen. Acts 1987, No. 862, § 1; 1995, No. 1296, § 51; 1997, No. 250, § 107; 2005, No. 1178, § 3.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 862, § 1. Acts 1987, No. 834 provided that 1987

legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Amendments. The 2005 amendment substituted "professional" for "land" throughout (b).

15-21-203. Advisory board — Organization and meetings.

The Advisory Board to the Division of Land Surveys shall select a chair from its membership. The board shall meet at least quarterly and at any other times as shall be determined by the Chair of the Advisory Board to the Division of Land Surveys.

History. Acts 1973, No. 458, § 5; A.S.A. 1947, § 10-1305.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

15-21-204. Advisory board — Duties.

The Advisory Board to the Division of Land Surveys created by this subchapter shall act in an advisory capacity to the Secretary of the Arkansas Agriculture Department and the State Surveyor in all mat-

ters relative to formulating policies of the Division of Land Surveys and in promulgating the regulations designed to establish uniform professional surveying and mapping methods and standards for the state and in formulating other policies, practices, and regulations as the secretary and the State Surveyor shall deem necessary to carry out the purpose and intent of this subchapter.

History. Acts 1977, No. 214, § 3; A.S.A. 1947, § 10-1321; Acts 2001, No. 1417, § 2; 2007, No. 752, § 3.

A.C.R.C. Notes. Acts 2001, No. 1417, § 6, provided: "Transfer. (a) Effective July 1, 2001, the Division of Land Surveys of the Arkansas Geological Commission is transferred by a Type 2 transfer as provided in Arkansas Code 25-2-105 to the Office of the Commissioner of State Lands.

"(b) For purposes of this act, the Arkansas State Land Survey Department shall be considered a principal department established by Act 38 of 1971."

Acts 2001, No. 1417, § 7, provided: "Other Authority. All other statutory authority, powers, duties, functions, records, property and funds administered or provided by other support divisions within the Arkansas Geological Commission shall be transferred by a Type 2 transfer as provided in Arkansas Code 25-2-105 to the Office of the Commissioner of State Lands upon the effective date of the transfer."

Acts 2001, No. 1417, § 10, provided: "Compliance With Other Laws. Disbursement of funds authorized by this act shall be limited to the appropriation for the agency being transferred and funds made available by law for the support of the

appropriations; and the restrictions of the State Purchasing Law, the General Accounting and Budgetary Procedures Law, the Revenue Stabilization Law, the Regular Salary Procedures and Restrictions Act, or their successors, and other fiscal control laws of this state, where applicable, and regulations promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of the funds."

Acts 2001, No. 1417, § 11, provided: "Legislative Intent. It is the intent of the General Assembly that any funds disbursed under the authority of the appropriations transferred or referred to in this act shall be in compliance with the stated reasons for which this act was adopted, as evidenced by the agency requests, executive recommendations and legislative recommendations contained in the budget manuals prepared by the Department of Finance and Administration, letters, or summarized oral testimony in the official minutes of the Arkansas Legislative Council or Joint Budget Committee which relate to its passage and adoption."

Amendments. The 2007 amendment substituted "Secretary of the Arkansas Agriculture Department" for "Commissioner of State Lands" twice.

15-21-205. State Surveyor — Generally.

(a) The Division of Land Surveys shall be headed by and shall be under the direction, supervision, and control of the State Surveyor.

(b) The State Surveyor shall:

(1) Be a person of proven administrative ability, a registered professional surveyor, and a resident of the State of Arkansas with training and experience properly qualifying the person for the performance of his or her official duties;

(2) Be appointed by and serve at the pleasure of the Secretary of the Arkansas Agriculture Department, provided that the secretary shall appoint the State Surveyor after consulting with the State Board of Licensure for Professional Engineers and Professional Surveyors and the Arkansas Society of Professional Surveyors;

(3) Devote his or her full time to the performance of his or her official functions and duties as prescribed in this subchapter;

(4) Hold no other lucrative position while serving as State Surveyor; and

(5) Receive such compensation as may be prescribed by law.

History. Acts 1973, No. 458, § 2; 1977, No. 214, § 2; A.S.A. 1947, §§ 10-1302, 10-1320; Acts 2001, No. 1417, § 3; 2005, No. 1178, § 4; 2007, No. 752, § 4.

A.C.R.C. Notes. Acts 2001, No. 1417, § 6, provided: "Transfer. (a) Effective July 1, 2001, the Division of Land Surveys of the Arkansas Geological Commission is transferred by a Type 2 transfer as provided in Arkansas Code 25-2-105 to the Office of the Commissioner of State Lands.

"(b) For purposes of this act, the Arkansas State Land Survey Department shall be considered a principal department established by Act 38 of 1971."

Acts 2001, No. 1417, § 7, provided: "Other Authority. All other statutory authority, powers, duties, functions, records, property and funds administered or provided by other support divisions within the Arkansas Geological Commission shall be transferred by a Type 2 transfer as provided in Arkansas Code 25-2-105 to the Office of the Commissioner of State Lands upon the effective date of the transfer."

Acts 2001, No. 1417, § 10, provided: "Compliance With Other Laws. Disbursement of funds authorized by this act shall be limited to the appropriation for the agency being transferred and funds made available by law for the support of the appropriations; and the restrictions of the State Purchasing Law, the General Accounting and Budgetary Procedures Law,

the Revenue Stabilization Law, the Regular Salary Procedures and Restrictions Act, or their successors, and other fiscal control laws of this state, where applicable, and regulations promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of the funds."

Acts 2001, No. 1417, § 11, provided: "Legislative Intent. It is the intent of the General Assembly that any funds disbursed under the authority of the appropriations transferred or referred to in this act shall be in compliance with the stated reasons for which this act was adopted, as evidenced by the agency requests, executive recommendations and legislative recommendations contained in the budget manuals prepared by the Department of Finance and Administration, letters, or summarized oral testimony in the official minutes of the Arkansas Legislative Council or Joint Budget Committee which relate to its passage and adoption."

Amendments. The 2005 amendment substituted "professional" for "land" in (b)(1).

The 2007 amendment, in (b)(2), substituted "Secretary of the Arkansas Agriculture Department" for "Commissioner of State Lands" and "Arkansas Society of Professional Surveyors" for "Arkansas Association of Registered Land Surveyors"; and deleted former (b)(3) and redesignated the remaining subsections accordingly.

15-21-206. State Surveyor — Powers and duties.

The State Surveyor, acting under the supervision and direction and with the approval of the Secretary of the Arkansas Agriculture Department, shall have the following authority and responsibility:

(1) To:

(A) Restore, maintain, and preserve the land survey monuments, section corners, and quarter section corners established by the United States Public Land Survey within the State of Arkansas, together with all pertinent field notes, plats, and documents; and

(B) Restore, establish, maintain, and preserve other boundary markers as may be determined to be necessary or important in establishing and maintaining accurate land descriptions in this state;

(2)(A) To design and cause to be placed at established public land survey corner sites, where practical, substantial monuments permanently indicating with words and figures the exact location involved.

(B) If the monuments cannot be placed at the exact corner point, then witness corners of similar design shall be placed as near as is possible with words and figures indicating the bearing and distance to the true corner;

(3) To establish, maintain, and provide safe storage facilities for a comprehensive system of recordation of information respecting all monuments established by the United States Public Land Survey within this state and any records as may be pertinent to the Division of Land Surveys of the Office of the Commissioner of State Lands establishment or maintenance of other land corners, Arkansas coordinate system stations and accessories, and monuments in general;

(4) To extend throughout the state a triangulation and leveling net of precision whereby the Arkansas Coordinate System 1983, § 15-21-301 et seq., already initiated in this state by the United States National Geodetic Survey may be made to cover to the necessary extent those areas of the state that do not now have enough geodetic control stations to permit the general use of the system by land surveyors and others;

(5) To collect and preserve information obtained from surveys made by those authorized to establish land monuments or land boundaries and to assist in the proper recording of the information by the duly constituted county officials or other appropriate officials;

(6)(A) To furnish certified copies of records created or maintained by the division to any person, entity, or agency upon request therefor and payment of the prescribed fees.

(B) All such records when certified by the State Surveyor or a designated assistant shall be admissible in evidence in any court in this state as the original record filed with this agency;

(7) To:

(A) Prescribe reasonable rules not inconsistent with law designed to establish uniform professional surveying and mapping methods and standards in this state;

(B) Disseminate the rules to those engaged in the profession of land surveying; and

(C) Administer the rules by referring evidence of violations to the State Board of Licensure for Professional Engineers and Professional Surveyors under subdivision (9) of this section;

(8) To promote the training and the increase in number of quality surveyors in this state;

(9) To receive and investigate complaints against any surveyor and to present the results from the investigation of complaints to the board for any action the board considers appropriate;

(10) To assist the county assessors in establishing accurate land descriptions of the state-owned or state-claimed lands and to assist the

public and private surveyors to obtain land ownership information for surveying purposes;

(11) To accept for the state gifts, grants, and donations from any and all persons, corporations, associations, and foundations and from the federal or state government or any agency or program thereof to be deposited in a financial institution in this state;

(12) To enter into such agreements or contracts with agencies of the United States Government, agencies of the State of Arkansas, other states, and registered land surveyors as he or she deems necessary or desirable to properly plan and execute projects within the scope and purpose of this subchapter; and

(13) To employ such surveyors and other professional and nonprofessional assistants and to take other reasonable action as deemed necessary to carry out the purposes of this subchapter.

History. Acts 1973, No. 458, § 3; A.S.A. 1947, § 10-1303; Acts 2001, No. 1417, § 4; 2007, No. 752, § 5; 2007, No. 1051, § 1; 2009, No. 694, §§ 1, 2.

A.C.R.C. Notes. Acts 2001, No. 1417, § 6, provided: "Transfer. (a) Effective July 1, 2001, the Division of Land Surveys of the Arkansas Geological Commission is transferred by a Type 2 transfer as provided in Arkansas Code 25-2-105 to the Office of the Commissioner of State Lands.

"(b) For purposes of this act, the Arkansas State Land Survey Department shall be considered a principal department established by Act 38 of 1971."

Acts 2001, No. 1417, § 7, provided: "Other Authority. All other statutory authority, powers, duties, functions, records, property and funds administered or provided by other support divisions within the Arkansas Geological Commission shall be transferred by a Type 2 transfer as provided in Arkansas Code 25-2-105 to the Office of the Commissioner of State Lands upon the effective date of the transfer."

Acts 2001, No. 1417, § 10, provided: "Compliance With Other Laws. Disbursement of funds authorized by this act shall be limited to the appropriation for the agency being transferred and funds made available by law for the support of the appropriations; and the restrictions of the State Purchasing Law, the General Ac-

counting and Budgetary Procedures Law, the Revenue Stabilization Law, the Regular Salary Procedures and Restrictions Act, or their successors, and other fiscal control laws of this state, where applicable, and regulations promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of the funds."

Acts 2001, No. 1417, § 11, provided: "Legislative Intent. It is the intent of the General Assembly that any funds disbursed under the authority of the appropriations transferred or referred to in this act shall be in compliance with the stated reasons for which this act was adopted, as evidenced by the agency requests, executive recommendations and legislative recommendations contained in the budget manuals prepared by the Department of Finance and Administration, letters, or summarized oral testimony in the official minutes of the Arkansas Legislative Council or Joint Budget Committee which relate to its passage and adoption."

Amendments. The 2007 amendment by No. 752 substituted "Secretary of the Arkansas Agriculture Department" for "Commissioner of State Lands" in the introductory paragraph.

The 2007 amendment by No. 1051 rewrote (7)(C) and (9).

The 2009 amendment, in (7), deleted "and regulations" following "rules" in (7)(B), and rewrote (7)(C); and rewrote (9).

15-21-207. Surveyors generally.

(a) Every employee of the Division of Land Surveys who performs any work required by law to be done by a registered professional surveyor shall be a registered surveyor.

(b) Neither the State Surveyor nor any employee of the division shall engage in private land surveying or consultation while so employed by the division.

(c) The State Surveyor and employees of the division shall cooperate with and assist county surveyors in performing their duties as prescribed by law and shall cooperate with and assist other surveyors in locating or establishing section corner markers and other land description markers and monuments.

(d) In performing the duties and responsibilities provided for in this subchapter, the State Surveyor and employees of the office of State Surveyor may solicit the advice and assistance of the county surveyor in each county and other surveyors in the county.

(e) If there are no registered professional surveyors in a particular county, the division may employ qualified registered professional surveyors from other areas of the state to assist the division in carrying out its duties and responsibilities under this subchapter.

History. Acts 1973, No. 458, §§ 10-12; A.S.A. 1947, §§ 10-1310 — 10-1312; Acts 2005, No. 1178, § 5.

Amendments. The 2005 amendment substituted “professional” for “land” in (a) and twice in (e).

15-21-208. Right to enter private property.

(a) The State Surveyor or any employee of the Division of Land Surveys shall have the right to enter upon private property for the purpose of making surveys or searching for, locating, relocating, or remonumenting land monuments, levelling stations, or section corners.

(b) Employees of the division and members of the Advisory Board to the Division of Land Surveys shall be immune from arrest for trespass in performing their duties as prescribed in this subchapter but shall always, where practical, announce and identify themselves and their intentions before entering upon private property. The employees and board members shall be personally liable for any damage caused to private property by their wantonness, willfulness, or gross negligence.

History. Acts 1973, No. 458, § 7; A.S.A. 1947, § 10-1307.

15-21-209. Exchange of information.

(a) When the State Surveyor so requests, the public recorder of deeds, mortgages, or other instruments dealing with interest in real property and all state agencies, boards, and commissions and all county and municipal officials shall furnish to the Division of Land Surveys certified copies of records in their custody which are essential for the division to carry out its duties under the provisions of this subchapter.

(b) Copies of the records shall be furnished free of cost when possible.

(c) If a charge is made for the records, it shall be a reasonable charge based upon the actual costs of furnishing the records.

(d) On request of state agencies and departments and county and municipal officials, the division shall furnish to such requesting officials or agencies certified copies of records of the division.

(e) The records shall be furnished free of cost when possible, but if a charge is to be made for furnishing the records, the charge shall be based upon the actual cost of furnishing the records.

History. Acts 1973, No. 458, § 8; A.S.A. 1947, § 10-1308.

15-21-210. Sale of information by division.

(a) The Division of Land Surveys may produce, reproduce, and sell maps, plats, and records and shall prescribe a reasonable charge therefor.

(b) All income derived from these sales shall be deposited in a financial institution in this state.

History. Acts 1973, No. 458, § 9; A.S.A. 1947, § 10-1309; Acts 2001, No. 1417, § 5.

15-21-211. Abstractors unaffected.

Nothing in this subchapter shall prohibit abstractors from preparing legal land descriptions.

History. Acts 1975, No. 579, § 5; 1977, No. 214, § 5; A.S.A. 1947, §§ 10-1317, 10-1323.

SUBCHAPTER 3 — ARKANSAS COORDINATE SYSTEM

SECTION.

15-21-301. Designation of system.

15-21-302. Creation of zones.

15-21-303. Designations within zones.

15-21-304. Land lying in both zones.

15-21-305. Coordinates.

15-21-306. Technical definition of system
— Marking of coordinates
on ground.

15-21-307. Proximity to stations required
for recording.

SECTION.

15-21-308. References to system on maps
and surveys.

15-21-309. Description by coordinates
supplemental to refer-
ences to public land sur-
veys.

15-21-310. Reliance on system not re-
quired.

Publisher's Notes. Former subchapter 3 of this chapter, concerning the Arkansas Coordinate System, was repealed by Acts 1991, No. 861, § 1. The former sub-

chapter was derived from the following sources:

15-21-301. Acts 1957, No. 424, § 1; A.S.A. 1947, § 50-801.

- 15-21-302. Acts 1957, No. 424, § 1; A.S.A. 1947, § 50-801.
15-21-303. Acts 1957, No. 424, § 2; A.S.A. 1947, § 50-802.
15-21-304. Acts 1957, No. 424, § 4; A.S.A. 1947, § 50-804.
15-21-305. Acts 1957, No. 424, § 3; A.S.A. 1947, § 50-803.
15-21-306. Acts 1957, No. 424, § 5; A.S.A. 1947, § 50-805.
15-21-307. Acts 1957, No. 424, § 6; A.S.A. 1947, § 50-806.
15-21-308. Acts 1957, No. 424, § 7; A.S.A. 1947, § 50-807.
15-21-309. Acts 1957, No. 424, § 8; A.S.A. 1947, § 50-808.
15-21-310. Acts 1957, No. 424, § 9; A.S.A. 1947, § 50-809.
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15-21-301. Designation of system.

The system of plane coordinates which has been established by the United States National Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the State of Arkansas is to be known and designated as the "Arkansas Coordinate System 1983".

History. Acts 1991, No. 861, § 1.

15-21-302. Creation of zones.

(a) For the purpose of the use of the Arkansas Coordinate System 1983 the state is divided into a "North Zone" and a "South Zone".

(b) The area now included in the following counties shall constitute the North Zone: Baxter, Benton, Boone, Carroll, Clay, Cleburne, Conway, Craighead, Crawford, Crittenden, Cross, Faulkner, Franklin, Fulton, Greene, Independence, Izard, Jackson, Johnson, Lawrence, Logan, Madison, Marion, Mississippi, Newton, Perry, Poinsett, Pope, Pulaski, Randolph, Scott, Searcy, Sebastian, Sharp, St. Francis, Stone, Van Buren, Washington, White, Woodruff, and Yell.

(c) The area now included in the following counties shall constitute the South Zone: Arkansas, Ashley, Bradley, Calhoun, Chicot, Clark, Cleveland, Columbia, Dallas, Desha, Drew, Garland, Grant, Hempstead, Hot Spring, Howard, Jefferson, Lafayette, Lee, Lincoln, Little River, Lonoke, Miller, Monroe, Montgomery, Nevada, Ouachita, Phillips, Pike, Polk, Prairie, Saline, Sevier, and Union.

History. Acts 1991, No. 861, § 1.

15-21-303. Designations within zones.

(a) As established for use in the North Zone, the Arkansas Coordinate System 1983 shall be named and in any land description in which it is used it shall be designated the "Arkansas Coordinate System 1983, North Zone".

(b) As established for use in the South Zone, the Arkansas Coordinate System 1983 shall be named and in any land description in which

it is used it shall be designated the "Arkansas Coordinate System 1983, South Zone".

History. Acts 1991, No. 861, § 2.

15-21-304. Land lying in both zones.

When any tract of land to be defined by a single description extends from one (1) into the other of the coordinate zones established by § 15-21-302, the positions of all points on its boundaries may be referred to either of the two (2) zones, the zone which is used being specifically named in the description.

History. Acts 1991, No. 861, § 4.

15-21-305. Coordinates.

(a) The plane coordinates of a point on the earth's surface to be used in expressing the position or location of such a point in the appropriate zone of the Arkansas Coordinate System 1983 shall consist of two (2) distances, expressed in meters and decimals of a meter.

(b) One (1) of these distances, to be known as the "east(x)-coordinate", shall give the position in the east-and-west direction, and the other, to be known as the "north(y)-coordinate", shall give the position in a north-and-south direction.

(c) These coordinates shall be made to depend upon and conform to the coordinates on the Arkansas Coordinate System 1983 of the triangulation and traverse stations of the United States National Geodetic Survey within the State of Arkansas as those coordinates have been determined by the survey.

(d)(1) The official conversion for meters to feet shall be the United States survey foot.

(2)(A) Meters shall be converted to United States survey feet by multiplying the number of meters by 39.37 and dividing that result by twelve (12).

(B) One (1) meter shall equal 39.37 inches.

(C) 3.280833333 United States survey feet are equal to one (1) meter.

History. Acts 1991, No. 861, § 3; 2005, rewrote (d), which formerly read, "One No. 1826, § 1.

Amendments. The 2005 amendment

15-21-306. Technical definition of system — Marking of coordinates on ground.

(a) For purposes of more precisely defining the Arkansas Coordinate System 1983, the following definition by the United States National Geodetic Survey is adopted:

(1)(A) The Arkansas Coordinate System 1983, North Zone, is a Lambert conformal projection of the North American Datum of 1983

(NAD83), having standard parallels at north latitudes of thirty-four degrees fifty-six minutes ($34^{\circ} 56'$ north) and thirty-six degrees fourteen minutes ($36^{\circ} 14'$ north), along which parallels the scale shall be exact.

(B) The origin of coordinates is at the intersection of the meridian ninety-two degrees zero minutes west of Greenwich ($92^{\circ} 00'$ west) and the parallel thirty-four degrees twenty minutes north latitude ($34^{\circ} 20'$ north). This origin is given the coordinates: East equals four hundred thousand meters (400,000 m.) and north equals zero meters (0.0 m.); and

(2)(A) The Arkansas Coordinate System 1983, South Zone, is a Lambert conformal projection of the North American Datum of 1983 (NAD83), having standard parallels at north latitudes of thirty-three degrees eighteen minutes ($33^{\circ} 18'$ north) and thirty-four degrees forty minutes ($34^{\circ} 40'$ north), along which parallels the scale shall be exact.

(B) The origin of coordinates is at the intersection of the meridian ninety-two degrees zero minutes west of Greenwich ($92^{\circ} 0'$ west) and the parallel thirty-two degrees forty minutes north latitude ($32^{\circ} 40'$ north). This origin is given the coordinates: East equals four hundred thousand meters (400,000 m.) and north equals four hundred thousand meters (400,000 m.).

(b) The position of Arkansas Coordinate System 1983 shall be marked on the ground by triangulation or traverse stations established in conformity with standards adopted by the United States National Geodetic Survey for first-order and second-order work, whose geodetic positions have been rigidly adjusted on the North American Datum of 1983 and whose coordinates have been computed on the system herein defined. Any such station may be used for establishing a survey connection with the Arkansas Coordinate System 1983.

History. Acts 1991, No. 861, § 5.

15-21-307. Proximity to stations required for recording.

No coordinates based on the Arkansas Coordinate System 1983 purporting to define the position of a point on a land boundary shall be presented to be recorded in any public land records or deed records unless such point is within fifteen (15) miles of a triangulation or traverse station established in conformity with the standards prescribed in § 15-21-306. However, the fifteen-mile limitation may be modified by a duly authorized state agency to meet local conditions.

History. Acts 1991, No. 861, § 6.

15-21-308. References to system on maps and surveys.

The use of the term "Arkansas Coordinate System 1983" on any map, report of survey, or other document shall be limited to coordinates based on the Arkansas Coordinate System 1983 as defined in this subchapter.

History. Acts 1991, No. 861, § 7.

15-21-309. Description by coordinates supplemental to references to public land surveys.

Wherever coordinates based on the Arkansas Coordinate System 1983 are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or other corner of the United States Public Land Survey, the description by the coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record, and in the event of any conflict, the description by reference to the subdivision, line, or corner of the United States Public Land Survey shall prevail over the description by coordinates.

History. Acts 1991, No. 861, § 8.

15-21-310. Reliance on system not required.

Nothing contained in this subchapter shall require any purchaser or mortgagee to rely on the description, any part of which depends exclusively upon the Arkansas Coordinate System 1983.

History. Acts 1991, No. 861, § 9.

SUBCHAPTER 4 — ACCEPTANCE OF FEDERAL SOIL CONSERVATION ACT

SECTION.	SECTION.
15-21-401. Policy and purposes — Acceptance of federal act.	15-21-405. Federal funds — Acceptance and use.
15-21-402. University of Arkansas designated as state agency.	15-21-406. Acceptance of lands donated for soil conservation purposes.
15-21-403. University powers and duties generally.	15-21-407. Accounts and reports.
15-21-404. State plans — Formulation and submission.	

Cross References. Soil conservation districts, § 14-125-101 et seq.

Effective Dates. Acts 1937, No. 348, § 3: Mar. 25, 1937. Emergency clause provided: "Whereas, the Hanceville soils in Arkansas predominate in sixteen central-western Arkansas counties, comprising an area of about eleven million acres of land practically all of which land of this soil type is especially subject to erosion; "Whereas, the farmers within the Hanceville soil area of Arkansas are not now served by a soil erosion experiment station which is able to supply adequate and complete information directly appli-

cable to the local problems of erosion control within said area; and "Whereas, the Soil Conservation Service has expressed themselves as recognizing the need for experiment work in the Hanceville soil area of Arkansas and has indicated a willingness, contingent upon appropriation of funds now in prospect, to begin developments at an early date provided suitable land at a desirable location could be made available; "Therefore, an emergency is hereby declared to exist and this act shall be in force and effect upon its passage by the General Assembly and approval by the Governor."

15-21-401. Policy and purposes — Acceptance of federal act.

(a) It is recognized and declared, as a matter of legislative determination, that the public welfare of this state requires the cooperation of this state with other states and with the federal government in the accomplishment of the policy and purposes declared by Congress in section 7(a) of the Soil Conservation and Domestic Allotment Act. Those policies and purposes are:

- (1) Preservation and improvement of soil fertility;
- (2) Promotion of the economic use and conservation of land;
- (3) Diminution of exploitation and wasteful and unscientific use of national soil resources;
- (4) The protection of rivers and harbors against the results of soil erosion in aid of maintaining the navigability of waters and water courses and in aid of flood control; and

(5)(A) Reestablishment, at as rapid a rate as the Secretary of Agriculture determines to be practicable and in the general public interest of the ratio between the purchasing power of the net income per person on farms and that of the income per person not on farms that prevailed during the five-year period August 1909 — July 1914, inclusive, as determined from statistics available in the Department of Agriculture, and the maintenance of such a ratio.

(B) The powers conferred under sections 7-14, inclusive, of the Soil Conservation and Domestic Allotment Act shall be used to assist voluntary action calculated to effectuate the purposes specified in this section. Such powers shall not be used to discourage the production of supplies of foods and fibers sufficient to maintain normal domestic human consumption as determined by the Secretary of Agriculture from the records of domestic human consumption in the years 1920-1929, inclusive, taking into consideration increased population, quantities of any commodity that were forced into domestic consumption by decline in exports during such a period, current trends in domestic consumption and exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities.

(C) In carrying out the purposes of this section, due regard shall be given to the maintenance of a continuous and stable supply of agricultural commodities adequate to meet consumer demand at prices fair both to producers and consumers.

(b) The State of Arkansas therefore adopts the policy of cooperating with the governments and agencies of other states and of the United States in the accomplishment of the policy and purposes of section 7 of the Soil Conservation and Domestic Allotment Act and accepts the provisions and requirements thereof.

History. Acts 1937, No. 175, § 1; Pope's Dig., § 11847; A.S.A. 1947, § 77-1501.

U.S. Code. Section 7 of the Soil Conservation and Domestic Allotment Act re-

ferred to in this section is codified as 16 U.S.C. § 590g. Sections 7-14, inclusive, of the act, also referred to in this section, are codified as 16 U.S.C. §§ 590g-590n.

15-21-402. University of Arkansas designated as state agency.

(a) The University of Arkansas, hereinafter referred to as the "university", is designated as the agency of the State of Arkansas to formulate, to submit to the Secretary of Agriculture, and to administer state agricultural plans designed to carry out the policy and purposes of section 7 of the Soil Conservation and Domestic Allotment Act.

(b) The university shall perform the duties and functions as the state agency separately and distinctly from the performance of its duties and functions in any other capacity, except that as the state agency, it shall cooperate with the dean and faculty of the Dale Bumpers College of Agricultural, Food and Life Sciences of the University of Arkansas, with the Cooperative Extension Service and the Agricultural Experiment Station, and with other agencies of the state qualified to assist therein. The university may utilize the services and assistance of the personnel and facilities normally used in the performance of other functions of the university if that may be done without interference with the effective performance of those other functions.

History. Acts 1937, No. 175, § 2; Pope's *conservation and Domestic Allotment Act,* referred to in this section, is codified as 16 Dig., § 11848; A.S.A. 1947, § 77-1502. U.S.C. § 590g.

15-21-403. University powers and duties generally.

In carrying out the provisions of each state agricultural plan, the University of Arkansas shall have the power to:

- (1) Designate and employ such agencies as it may deem necessary;
- (2) Cooperate with local and state agencies and with agencies of other states and of the federal government;
- (3) Provide for the conduct of research and to conduct educational activities in connection with the operation of such plans;
- (4) Provide for adjustments, by voluntary methods, in the utilization of land and in farming practices and for payments in connection therewith; and
- (5) Prescribe such rules and regulations as may be necessary or expedient with reference to the administration of such state agricultural plans.

History. Acts 1937, No. 175, § 5; Pope's Dig., § 11851; A.S.A. 1947, § 77-1505.

15-21-404. State plans — Formulation and submission.

The University of Arkansas, as the state agency, is authorized, empowered, and directed to:

- (1) Formulate, pursuant to the standards therefor as provided in § 15-21-403, agricultural plans for this state for each calendar year and, from time to time, make revisions in the state agricultural plans as may be necessary or proper to conform to the standards; and

(2) Submit the state agricultural plans and all revisions thereof to the Secretary of Agriculture in conformity with the provisions of section 7 of the Soil Conservation and Domestic Allotment Act.

History. Acts 1937, No. 175, § 3; Pope's conservation and Domestic Allotment Act, Dig., § 11849; A.S.A. 1947, § 77-1503. referred to in this section, is codified as 16 U.S. Code. Section 7 of the Soil Con- U.S.C. § 590g.

15-21-405. Federal funds — Acceptance and use.

(a) The University of Arkansas, as the state agency, is authorized and empowered to accept and receive all grants of money made pursuant to section 7 of the Soil Conservation and Domestic Allotment Act for the purpose of enabling the State of Arkansas to carry out the provisions of any state agricultural plan.

(b)(1) All such funds, subject to any conditions upon which the funds shall have been granted, together with any moneys which may be appropriated by the state for such a purpose, shall be available to the university for expenditures as provided in the state agricultural plans.

(2) Expenditures may include, but need not be limited to, expenditures for research and investigation, administrative expenses, equipment, supplies, salaries, compensation, and expenses of the officers and agents of the university in connection with the execution of their duties hereunder, educational activities, benefit payments, and all other necessary or proper expenditures incident to any such matters, including reimbursement to other funds of the university for expenditures made in effectuating the policy of this subchapter.

History. Acts 1937, No. 175, § 4; Pope's conservation and Domestic Allotment Act, Dig., § 11850; A.S.A. 1947, § 77-1504. referred to in this section, is codified as 16 U.S. Code. Section 7 of the Soil Con- U.S.C. § 590g.

15-21-406. Acceptance of lands donated for soil conservation purposes.

The Board of Trustees of the University of Arkansas is authorized to:

(1) Accept donations of land and to acquire title to the land for the use of the National Resources Conservation Service of the United States Department of Agriculture to conduct, in cooperation with the Arkansas Agricultural Experiment Station, experiments in soil erosion and erosion control and prevention; and

(2) Enter into agreement or contract with or give permission to the National Resources Conservation Service of the United States Department of Agriculture for the improvement, development, and operation of the lands acquired.

History. Acts 1937, No. 348, § 1; Pope's Dig., § 11853; A.S.A. 1947, § 77-1506.

15-21-407. Accounts and reports.

The University of Arkansas shall provide for keeping full and accurate accounts of its transactions as a state agency, separate from the accounts of its transactions in other capacities, and shall provide for the rendering of necessary and proper reports, including reports designed to ascertain whether any state agricultural plans provided for in this subchapter are being carried out according to their terms.

History. Acts 1937, No. 175, § 5; Pope's Dig., § 11851; A.S.A. 1947, § 77-1505.

SUBCHAPTER 5 — ARKANSAS STATE LAND INFORMATION BOARD**SECTION.**

15-21-501. Purpose.

15-21-502. Definitions.

15-21-503. Creation — Board.

SECTION.

15-21-504. Duties, responsibilities, and authority.

15-21-505. [Repealed.]

Effective Dates. Acts 1997, No. 914, § 35: July 1, 1997. Emergency clause provided: "It is found and determined by the Eighty-First General Assembly that continuing advances in the field of communications and information technology make it necessary to establish a Department of Information Systems within the Executive Department of Government to better coordinate and utilize such technology; and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1997, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1997."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of

2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2007, No. 751, § 38: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act dissolves and transfers the duties of the Executive Chief Information Officer, Chief Information Officer, and Office of Information Technology; and that dissolving the offices at the beginning of the state's fiscal year will result in a more efficient transfer of responsibilities and funds. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

15-21-501. Purpose.

(a) In recognition that a vast majority of all information used in the management of government can be spatially referenced and that public

institutions and private firms expend considerable resources collecting and managing land information records in diverse and disparate formats and scales, a modern automated system of accessible land information data and technologies is required to serve the essential needs of individuals, businesses, and government agencies.

(b) The essential component of all automated land information systems is valid, consistent, comprehensive, available, and current data. Since federal, state, regional, county, and municipal agencies, state universities and colleges, private firms, and others require the same spatial data, it is desirable that unnecessary duplication of effort be avoided, that existing data be shared in a coordinated manner, and that new data be developed in an accurate and usable form in accordance with the State of Arkansas Enterprise Architecture. Pursuant to this, all state agencies, boards, and commissions are required to cooperate and participate with the Arkansas Geographic Information Systems Board.

(c) Implementation of an overall Arkansas land and geographic resources program requires cooperative methods for development and maintenance of spatial data between state and local governments in the State of Arkansas.

(d) The board will determine, define, and implement short-term and long-term strategies that will result in improved decision making, effective asset management, and reduced costs for the citizens of Arkansas.

History. Acts 1995, No. 1259, § 3; 2001, No. 1250, § 1; 2009, No. 244, § 1.

Amendments. The 2009 amendment deleted (b), redesignated the remaining subsections accordingly, and in (b), substituted "State of Arkansas Enterprise Ar-

chitecture" for "State of Arkansas Shared Technical Architecture" and substituted "Arkansas Geographic Information Systems Board" for "Arkansas State Land Information Board."

15-21-502. Definitions.

As used in this subchapter:

(1) "Agency" means any agency or instrumentality of the State of Arkansas that utilizes geographic information systems data;

(2) "Arkansas Geographic Information Office" means the office that provides administrative and technical support to the Arkansas Geographic Information Systems Board, including, but not limited to, staff, hardware, software, and representation;

(3) "Arkansas Spatial Data Infrastructure" means the combination of state framework data, data repository, or GeoStor, distribution mechanisms, and the staff and organizational structures necessary to accomplish these activities;

(4) "Digital basemap" means a computerized representation of map information;

(5) "Digital cadastre" means the storage and manipulation of computerized representations of parcel maps and linked parcel databases;

(6) "Framework data" means commonly needed data themes developed, maintained, and integrated by public and private organizations within a geographic area. These data themes include, but are not limited to, digital cadastre, public land survey system, elevation, geodetic control, governmental units, hydrography, orthoimagery, transportation, soils, and geology;

(7) "Metadata" means a description of the content, ancestry and source, quality, database schema, and accuracy of digital map data;

(8) "Spatial data" means information that identifies the geographic location and characteristics of natural or constructed features and boundaries on the earth. This information may be derived from, among other things, remote sensing, mapping, and surveying technologies;

(9) "Spatial data repository" means the physical location and content of the state's consolidated spatial data;

(10) "State Chief Technology Officer" means the Director of the Department of Information Systems;

(11) "State Geodetic Advisor" means the coordinator of the state's network of geodetic control monuments;

(12) "State Geographic Information Officer" means the person who provides administrative and technical support to the board; and

(13) "State of Arkansas Enterprise Architecture" means the same as the definition set out at § 25-4-103(16).

History. Acts 1995, No. 1259, §§ 2, 7; 1997, No. 914, § 27; 2001, No. 1250, § 2; 2003, No. 1473, § 32; 2009, No. 244, § 1.

Amendments. The 2009 amendment substituted "Arkansas Geographic Information Systems Board" for "Arkansas

State Land Information Board" in (1); deleted former (4); inserted (10); redesignated the remaining subdivisions accordingly; substituted "Officer" for "Coordinator" in (12); and rewrote (13).

15-21-503. Creation — Board.

(a) The Arkansas Geographic Information Systems Board is created.

(b)(1)(A)(i) The board shall be composed of thirteen (13) voting members.

(ii) Twelve (12) of the voting members shall be appointed by the Governor for terms of four (4) years.

(iii) The thirteenth voting member shall be the State Chief Technology Officer.

(B) At the time of appointment or reappointment, the appointing authority shall adjust the length of terms to ensure that the terms of members of the board are staggered so that, insofar as possible, an equal number of members shall rotate each year.

(2) The board shall be composed of the following members or their designees:

(A) Three (3) state entity representatives;

(B) Three (3) city, county, and local government representatives;

(C) Three (3) private sector representatives;

(D) Three (3) representatives of institutions of higher education; and

(E) The State Chief Technology Officer.

(3) All members of the board shall have knowledge of the use and usefulness of digital land and geographic information in the management of government and a general awareness of the role of mapping as related to that management.

(4) No person shall serve as a member of the board for more than two (2) full consecutive terms.

(5) Upon the death, disability, resignation, removal, or refusal to serve of any member, the Governor shall appoint a qualified person to complete board membership.

(c)(1)(A) A chair and a vice chair shall be elected by the board membership to oversee all board and committee meetings.

(B) Members of the board must elect a chair and vice chair every year.

(2)(A) The board shall appoint the State Geographic Information Officer to serve with the approval and at the pleasure of the Governor.

(B) The State Geographic Information Officer will:

(i) Assist the board in developing a comprehensive plan and evaluation procedures on how the state should implement tactical and strategic geographic information systems and land information systems planning;

(ii) Implement informational and educational programs; and

(iii) Coordinate intrastate geographic information systems and land information systems efforts.

(C) The State Geographic Information Officer shall report directly to the Governor.

(d)(1) The State Geographic Information Officer shall administer daily operations of the Arkansas Geographic Information Office with direction from the board.

(2) This may include liaison between the board, the Governor, the State Chief Technology Officer, and public or private sector entities involved in spatial data and land records modernization, project management in the preparation of the strategic planning documents related to spatial data and land records modernization, developing policy and procedures for land records modernization, and developing policy and procedures for the activities of the board.

(3) Additional requirements are the implementation of educational programs, coordinating vendor exhibits, and facilitating technical assistance and consulting.

(e) The board may conduct meetings at such places and such times as it may deem necessary or convenient to enable it to exercise fully and effectively its powers, perform its duties, and accomplish its objectives and purposes.

(f) Members of the board shall receive no compensation for their services.

(g) The board will be provided administrative support through the Arkansas Geographic Information Office.

(h) The funds necessary to carry out the provisions of this subchapter shall come from the Geographic Information Systems Fund.

(i) The board shall provide an annual report on the status of the Arkansas Spatial Data Infrastructure to the Joint Committee on Advanced Communications and Information Technology .

History. Acts 1995, No. 1259, §§ 1, 5; 1997, No. 914, § 28; 2001, No. 1250, § 3; 2003, No. 1473, § 33; 2005, No. 264, § 1; 2007, No. 751, § 7; 2009, No. 244, § 1.

A.C.R.C. Notes. As enacted by Acts 1995, No. 1259, § 5, subsection (b) contained an additional subdivision that read as follows: "Members will be generally drawn from, but not limited to, the membership of the State Mapping and Land Records Modernization Advisory Board created by Act 150 of 1993."

As enacted by Acts 1995, No. 1259, § 5, subdivision (b)(2) ended: "The initial organizational meeting and election of Board officers shall be moderated by the Director of the Department of Computer Services."

As enacted by Acts 1995, No. 1259, § 5, subdivision (c)(1)(B) ended: "The initial Board terms shall be determined by drawing lots with three (3) members drawing five (5) year terms, two (2) members drawing four (4) year terms, two (2) members drawing three (3) year terms, and two (2) members drawing two (2) year terms."

Amendments. The 2005 amendment, in (b)(4), substituted "No" for "With the exception of those members appointed to the board representing a state agency" at the beginning and inserted "full"; deleted former (e) and redesignated the remain-

ing subsections accordingly; and substituted "Office of Information Technology" for "Department of Information Systems. One (1) of the three (3) state entity representatives shall be a department employee as recommended by the Director of the Department of Information Systems" in present (g).

The 2007 amendment substituted "Director of the Department of Information Systems" for "Executive Chief Information Officer" in (c)(2)(A), (c)(2)(C) and (d)(2); and substituted "Arkansas Geographic Information Office" for "Office of Information Technology" in (g).

The 2009 amendment substituted "Geographic Information Systems" for "State Land Information" in (a); in (b), inserted (b)(1)(A)(iii), redesignated the remaining text accordingly, substituted "thirteen (13)" for "twelve (12)" in (b)(1)(A)(i), inserted "Twelve (12) of the voting members shall be" in (b)(1)(A)(ii), and inserted (b)(2)(E); in (c), rewrote (c)(2)(A), substituted "Officer" for "Coordinator" in (c)(2)(B) and (c)(2)(C), and substituted "Governor" for "Director of the Department of Information Systems" in (c)(2)(C); substituted "State Chief Technology Officer" for "Director of the Department of Information Systems" in (d)(2); and rewrote (i).

15-21-504. Duties, responsibilities, and authority.

(a) The Arkansas Geographic Information Systems Board shall be empowered to:

(1) Provide a strategy for the continuing development of the Arkansas Spatial Data Infrastructure;

(2) Develop standard metadata reports through the Arkansas Geographic Information Office; and

(3) Direct available funds to mapping and land records modernization projects at various levels of government.

(b) The board shall:

(1) Undertake a continuing study of the land information needs of federal, state, county, and local agencies and private entities in the state;

(2) Review current and projected technology, standards, and collection methods and all statutes pertaining thereto;

(3) Develop strategies and guidelines for spatial data systems and land records modernization; and

(4) Pursue activities that result in coordinated cost-effective programs for spatial data development and distribution.

(c) The board shall coordinate completion and maintenance of shareable statewide framework data, applications of geographic information system technologies, spatial project methodologies, and methods of funding.

(d)(1) The board will develop and implement a program to further the process of land records modernization.

(2)(A) The board, using the technical support provided by the Arkansas Geographic Information Office, shall coordinate the development and maintenance of a statewide digital cadastre system.

(B) The digital cadastre manages and provides access to cadastral information. Digital cadastre does not represent legal property boundary descriptions, nor is it suitable for boundary determination of the individual parcels included in the cadastre.

(C) The board, using the technical support provided by the Arkansas Geographic Information Office, shall coordinate the development and maintenance of a statewide road centerline database.

(D) The board, using the technical support provided by the Arkansas Geographic Information Office, shall coordinate the development and maintenance of a statewide digital orthophotography database with a priority to be taken in leaf-off conditions.

(e) The duties of the board shall include, but not be restricted to:

(1) Identifying issues, problems, and solutions in implementing an overall Arkansas land and geographic resources program;

(2) Identifying and clarifying the roles of participants;

(3) Developing an overall coordinating schedule for framework data projects;

(4) Recommending methods of financing;

(5) Developing recommended priorities for the distribution of funds;

(6) Developing procedures for the inventory, storage, and distribution of spatial information;

(7) Implementing an ongoing information and education program to promote understanding and productive use of spatial and land information systems by public and private entities and individuals; and

(8) Encouraging and coordinating collaborative spatial project efforts and rewarding participants of collaborative efforts that result in economies of scale or demonstrable cost savings.

(f)(1) The board, through the Arkansas Geographic Information Office, shall define technical specifications and standards to use in the collection, distribution, and reporting of spatial information as required by the State of Arkansas Enterprise Architecture.

(2)(A) The board shall require metadata to be prepared and attached to all publicly funded mapping and geographic information systems databases.

(B) The metadata shall follow the Federal Geographic Data Committee content for the geospatial metadata standard.

(g) The board will serve as a point of contact for existing or proposed federal programs that impact the creation of spatial data or the Arkansas Spatial Data Infrastructure, or both.

(h) The board, through the Arkansas Geographic Information Office, shall review the strategic plans for digital mapping and land records modernization and make recommendations for the distribution of public funds for land records modernization, enhancement, and implementation.

(i) The Arkansas Geographic Information Office will serve as a statewide source of mapping and geographic information technology and will coordinate with federal agencies on state components of the National Spatial Data Infrastructure.

(j)(1) The Arkansas Geographic Information Office may utilize existing repositories as appropriate in order to maintain the Arkansas Spatial Data Infrastructure.

(2)(A) Agreements will be interagency service agreements and are exempt from the provisions of the Arkansas Procurement Law, § 19-11-201 et seq., and regulations.

(B) Further, these agreements will not be considered professional services or consulting service contracts.

(k) The Arkansas Geographic Information Office shall submit an annual maintenance plan and budget for geographic information systems and geodata services relating to the Arkansas Spatial Data Infrastructure to the board.

(l) As directed by the board, the Arkansas Geographic Information Office will coordinate framework data development and maintenance, provide technical processing of data sets, evaluate adherence to state-approved mapping standards, and work with spatial data stakeholders on statewide projects.

History. Acts 1995, No. 1259, § 4; 1997, No. 914, § 29; 2001, No. 1250, § 4; 2009, No. 244, § 1.

Amendments. The 2009 amendment substituted "Geographic Information Systems" for "State Land Information" in (a); in (d)(2), in (A), substituted "coordinate the development and maintenance" for "conduct a comprehensive study of the

costs, requirements, and benefits" and inserted "statewide," and inserted (C) and (D); rewrote (f); deleted (g)(1) and redesignated the remaining subdivision accordingly; rewrote (i); deleted former (j) and (l) and redesignated the remaining subsections accordingly; rewrote (k); and deleted "both state and federal" following "work with" in (l).

15-21-505. [Repealed.]

Publisher's Notes. This section, concerning the creation of a state digital data repository, was repealed by Acts 2001, No.

1250, § 5. The section was derived from Acts 1995, No. 1259, § 6; 1997, No. 914, § 30.

SUBCHAPTER 6 — EARTHQUAKE ACTIVITY

SECTION.

15-21-601. Legislative intent.

15-21-602. Arkansas Seismological Ob-
servatory.

SECTION.

15-21-603. Seismic network for monitor-
ing earthquake activity.

Cross References. Earthquake pre-
paredness, § 12-77-101 et seq.

Earthquake resistant design for public
structures, § 12-80-101 et seq.

15-21-601. Legislative intent.

It is found and determined by the General Assembly that:

(1) Earthquake activity in Arkansas has never been closely monitored by a local network of seismic stations and that the realistic assessment of seismic hazards in this state can only be accomplished by long-term local monitoring of earthquake activity in this state;

(2) Although the monitoring systems operated by St. Louis University and the Center for Earthquake Research and Information at the University of Memphis have provided a great deal of information for risk assessment in the New Madrid seismic zone, the need for monitoring within Arkansas has become apparent;

(3) It would be most beneficial to the residents of this state for a collaborative program to be established between St. Louis University, the University of Memphis, and the Arkansas Center for Earthquake Education and Technology Transfer at the University of Arkansas at Little Rock in order to coordinate efforts and prevent duplication;

(4) The Arkansas Center for Earthquake Education and Technology Transfer is ideally located to handle the logistics of installing and maintaining a network of seismic monitoring stations within this state and is committed to offering the necessary personnel and facilities to efficiently handle the undertaking; and

(5) The focus will be on establishing long-term, continuous monitoring of earthquake activity in Arkansas in order to provide reliable data for a realistic seismic hazard assessment, and it is the intent of this subchapter to accomplish that purpose.

History. Acts 1999, No. 1364, § 1.

15-21-602. Arkansas Seismological Observatory.

(a) The University of Arkansas at Little Rock is directed to establish the Arkansas Seismological Observatory as a part of the Arkansas Center for Earthquake Education and Technology Transfer.

(b) The observatory shall:

(1) Monitor earthquake activity throughout the state;

(2) Assist in emergency planning and in providing early warning;

- (3) Provide public education regarding earthquake hazards;
- (4) Provide information useful for earthquake hazard mitigation;
- (5) Provide the scientific community with relevant data;
- (6) Provide real-time, immediate data regarding seismic activity to government agencies such as the Arkansas Department of Emergency Management, the Arkansas Geological Survey, and critical facilities that operate in the region such as Arkansas Nuclear One, the National Center for Toxicological Research, and the Army Nerve Gas Facility; and
- (7) Establish a collaborative relationship with St. Louis University and the University of Memphis in order to coordinate efforts and prevent duplication of effort.

History. Acts 1999, No. 1364, § 2.

15-21-603. Seismic network for monitoring earthquake activity.

The seismic network operated by the Arkansas Seismological Observatory should initially consist of at least ten (10) stations installed at remote locations with the central recording station located on the campus of the University of Arkansas at Little Rock. The complete monitoring network should be established over a five-year period to allow for technological upgrades so that state-of-the-art seismological equipment will be utilized appropriately throughout the network.

History. Acts 1999, No. 1364, § 3.

CHAPTER 22

WATER RESOURCES

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. ALLOCATION AND USE GENERALLY.
3. DETERMINATION OF WATER USE REQUIREMENTS.
4. ABANDONED OR UNUSED ARTESIAN WELLS.
5. WATER DEVELOPMENT PROJECTS GENERALLY.
6. ARKANSAS WATER RESOURCES DEVELOPMENT ACT OF 1981.
7. ARKANSAS WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES FINANCING ACT OF 1987.
8. ARKANSAS WATER RESOURCES COST SHARE FINANCE ACT.
9. ARKANSAS GROUNDWATER PROTECTION AND MANAGEMENT ACT.
10. ARKANSAS WETLANDS MITIGATION BANK ACT.
11. SAFE DRINKING WATER FUND.
12. SPARTA AQUIFER CRITICAL GROUNDWATER COUNTIES' REMEDIATION ACT.
13. REVENUE BONDS FOR WATER RESOURCES.

A.C.R.C. Notes. Acts 1995, No. 1224, §§ 1-25, provided: "SECTION 1. This Act may be referred to and cited as the 'Arkansas Water, Waste Disposal, Pollution Abatement, Administrative and Research Facilities Financing Act of 1995'.

"SECTION 2. (a) The Arkansas Soil and Water Conservation Commission, either directly or through the Arkansas Development Finance Authority, is hereby authorized to issue bonds of the State of Arkansas, to be known as State of Arkan-

sas Water, Waste Disposal, Pollution Abatement, Administrative and Research Facilities General Obligation Bonds (the 'Bonds'), in total principal amount not to exceed Three Hundred Million Dollars (\$300,000,000), for the purposes set forth herein. The Bonds may be issued in one or more series as required subject to the conditions and in compliance with the procedures set forth herein.

"(b) The total principal amount of Bonds to be issued during any fiscal biennium shall not exceed Sixty Million Dollars (\$60,000,000), unless the General Assembly shall, by law, have authorized a greater principal amount thereof to be issued during a fiscal biennium. Provided further that, before any Bonds may be issued during any fiscal biennium the Arkansas Soil and Water Conservation Commission shall submit to the Governor a written plan (1) setting forth the criteria to be used by the Commission in choosing (A) the Projects to be financed with the proceeds derived from the sale of such Bonds and/or (B) the programs for which funds may be provided by the Commission to finance Projects, and (2) requesting authorization for the projected maximum principal amount of Bonds required to be issued in such fiscal biennium. Upon receipt thereof, the Governor shall confer with the Chief Fiscal Officer of the State concerning whether the annual amount of general revenue funds required to be set aside from the general revenues of the State, as such term is used in the Revenue Stabilization Law of Arkansas, and defined in the Revenue Classification Law of Arkansas, for payment of debt service requirements in connection with the Bonds during either year of the fiscal biennium in which the Bonds are to be issued, would require moneys from the general revenues of the State that would work undue hardship upon any agency or program supported from the general revenues of the State under the provisions of the Revenue Stabilization Law of Arkansas.

"(c) Upon conclusion of such studies, and after obtaining the advice of the Legislative Council thereon, the Governor shall, if he deems the same to be in the public interest, by proclamation, authorize the Commission to proceed with the issuance of the Bonds in a maximum prin-

cipal amount approved by the Governor for the fiscal biennium.

"(d) If the Governor shall decline or refuse to give his approval for the issuance of such Bonds, and shall decline to issue a proclamation approving the issuance thereof, the Governor shall promptly notify the Commission, in writing, such Bonds shall not be issued, but the Commission may resubmit a request to the Governor for the issuance thereof. The issue as resubmitted to the Governor shall be dealt with in the same manner as provided for the initial request for authority to issue the Bonds.

"SECTION 3. The Commission may assign to the Authority, and the Authority may assume from the Commission, the Commission's authority to issue one or more series of bonds of the state under this act. The assignment and assumption shall be authorized by resolutions of the Commission and the Authority, respectively. In addition or in the alternative, the Commission and the Authority may enter into a contract in which the Authority agrees: (1) to act as servicer of any loans made to, or of bonds purchased from, any Local Entities, (2) to act as financial advisor to the Commission in connection with the issuance of any series of the Bonds, or (3) to perform any other administrative service, activity, undertaking or function of the Commission or the Issuer in connection with the issuance and sale of a particular series of the Bonds, all as shall be designated in the contract. The Commission is authorized to pay the Authority for any such services as may be provided by the Authority. Any contract shall be authorized by resolutions of the Commission and the Authority.

"SECTION 4. In this Act, unless the context otherwise requires,

"(a) 'Commission' means the Arkansas Soil and Water Conservation Commission, and any successor agency or department;

"(b) 'debt service' means principal, interest, redemption premiums, if any, and trustees' and paying agents' and like servicing fees relative to the Bonds;

"(c) 'develop' means to plan, design, construct, acquire (by purchase or, as set forth herein, by eminent domain), own, operate, rehabilitate, lease as lessor or lessee, enter into lease-purchase agreements with respect to, lend, make grants

in respect of, or install or equip any lands, buildings, improvements, machinery, equipment, or other properties of whatever nature, real, personal or mixed;

"(d) 'drainage' means the removal or diversion of water from lands through natural or artificial means;

"(e) 'FDIC' means the Federal Deposit Insurance Corporation, or any successor thereto insuring deposits of commercial banks;

"(f) 'flood control' means (1) drainage and flood prevention improvements for protection from water-induced damages, (2) adjustments in land use and facilities designed to reduce flood damage from overflow or backwater due to major storms and snowmelt, and (3) facilities designed to collect and convey runoff from rainfall or snowmelt to natural watercourses or previously-modified natural waterways;

"(g) 'general revenues of the State' means the revenues described and enumerated in Subchapter 2 of the Revenue Classification Law of Arkansas or in any successor law;

"(h) 'irrigation' means the production or transportation of water for agricultural uses through artificial or natural conveyances for watering of crops or other agricultural products;

"(i) 'Local Entity' means any nonprofit corporation, or any county, municipality, conservation district, improvement district, drainage district, irrigation district, levee district, regional water distribution district, public facilities board, rural development authority, regional wastewater treatment district, regional solid waste management district, rural water association or school district in the State or any agency or instrumentality of any of the foregoing, or any agency or instrumentality of the State, including the Commission;

"(j) 'nationally recognized rating agency' means Moody's Investors Service, Inc., Standard & Poor's Ratings Group, or any other nationally recognized rating agency approved by the Treasurer of State;

"(k) 'Person' means any Local Entity or any individual, corporation, trust, limited liability company or partnership;

"(l) 'pollution abatement' means reduction, prevention, recycling, control or elimination by appropriate methods of

such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the State, or of such discharge of any liquid, gaseous or solid substance as will or is likely to create a nuisance or render any waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life;

"(m) 'Prior Acts' means, collectively, Act No. 496 of 1981, as now or hereafter amended, codified as A.C.A. §§ 15-22-601 et seq., and Act No. 686 of 1987, as enacted or as hereafter amended, codified as A.C.A. §§ 15-22-701 et seq.;

"(n) 'Project' means any lands, buildings, improvements, machinery, equipment, or other property, real, personal or mixed, or any combination thereof, developed in pursuance of all or any of the purposes of this Act, including but not limited to the following: (1) the production, impoundment, treatment and transportation of water, (2) the collection, treatment and disposition of waste, (3) pollution abatement, (4) drainage or flood control facilities, (5) irrigation facilities, (6) the preservation and development of wetlands, (7) any facilities authorized by or pursuant to the Prior Acts and (8) central administrative and research facilities for the Commission. Included are Projects for agricultural, administrative, research, residential, recreational, commercial and industrial purposes and Projects for the use and benefit of Local Entities, the Commission and other Persons. Included are facilities and improvements which are necessary, ancillary or related to those enumerated;

"(o) 'Project Costs' means all or any part of the costs of developing any Project, costs incidental or appropriate thereto including, without limitation, all costs to the Commission associated with the development of any Project in a supervisory capacity, and costs incidental or appropriate to the financing thereof, including, without limitation, capitalized interest, costs of issuance of and appropriate reserves for the Bonds and fees and costs for engineering, legal, and other administrative and consultant services;

"(p) 'Revenue Classification Law of Arkansas' means Act No. 808 of 1973, as now

or hereafter amended, codified as A.C.A. § 19-6-101 et seq.;

“(q) ‘Revenue Stabilization Law of Arkansas’ means Act No. 750 of 1973, as now or hereafter amended, codified as A.C.A. § 19-5-101 et seq.;

“(r) ‘State’ means the State of Arkansas;

“(s) ‘State Apportionment Fund’ means the fund by that name created by Subchapter 2 of the Revenue Stabilization Law of Arkansas or in any successor law;

“(t) ‘water’ means any waters of the State, including surface water and ground water;

“(u) ‘waste’ means any liquid or solid produced as an undesirable byproduct of any activity;

“(v) ‘wetlands’ means land that (1) has a predominance of hydric soils, (2) is inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, and (3) under normal circumstances does support a prevalence of such vegetation.

“(w) ‘Authority’ means the Arkansas Development Finance Authority and any successor agency or department.

“(x) ‘Issuer’ means the Commission or the Authority, as shall be designated by the Commission with respect to a series of Bonds.

“SECTION 5. (a) The Bonds shall be issued, in series, as set forth herein, in amounts sufficient to finance or refinance all or any part of Project Costs with the respective series to be designated in alphabetical order and/or by the year in which issued.

“(b) Each series of the Bonds shall have such date as the Issuer shall determine and shall mature or be subject to mandatory sinking fund redemption as determined by the Issuer, over a period ending not later than thirty-five (35) years after the date of the Bonds of each series. Pending the issuance of Bonds hereunder, the Issuer may issue temporary notes, maturing not more than five (5) years from the date of issuance, to be exchanged for or paid from the proceeds of Bonds at such time as the Bonds may be issued.

“(c) Each series of the Bonds shall bear interest, whether or not subject to federal income taxation, at the rate or rates accepted by the Commission. Interest shall

be payable at such times as the Issuer shall determine.

“(d) The Bonds may be issued in such form; may be in such denominations; and may be made exchangeable for Bonds of another form or denomination, bearing the same rate of interest and date of maturity; may be made payable at such places within or without the State; may be made subject to redemption prior to maturity in such manner and for such redemption prices; and may contain such other terms and conditions, all as the Issuer determine.

“(e) The Bonds shall have all the qualities of negotiable instruments or securities under the laws of the State, subject to the provision for registration of ownership.

“SECTION 6. Bonds issued under this Act shall be issued for the purpose of financing (on a temporary or permanent basis), refinancing and developing one or more Projects, and the proceeds of the Bonds shall be applied to the payment of Project Costs and the costs and expenses of issuance of the Bonds, or in connection with a Project refinancing, the repayment of indebtedness incurred to pay Project Costs or for refunding of Bonds as provided in Section 14.

“SECTION 7. (a) The Bonds shall be authorized by resolution of the Issuer. Each such resolution shall contain such terms, covenants, and conditions as are deemed desirable, including, without limitation, those pertaining to the establishment and maintenance of funds and accounts, to the deposit and investment of revenues and of Bond proceeds and to the rights and obligations of the State, its officers and officials, the Commission and the Issuer and the registered owners of the Bonds. The resolution of the Issuer may provide for the execution and delivery by the Issuer of a trust indenture or trust indentures, with one or more banks or trust companies located within or without the State, containing any of the terms, covenants, and conditions referred to above, which trust indenture or trust indentures shall be binding upon the State, and its agencies, officers and officials, to the extent set forth in this Act.

“(b) Any resolution or trust indenture adopted or executed under this Section shall provide that power is reserved to apply to the payment of debt service on

the Bonds issued or secured thereunder all or any part of the revenues which may be derived from any Project financed by such Bonds; and, to the extent of such revenues which the Issuer elects to apply to debt service, to release from any requirement of such resolution or trust indenture other revenues and resources of the State, including, without limitation, the general revenues of the State required to be transferred under Section 12 hereof.

"SECTION 8. Each Bond shall be signed with the manual or facsimile signatures of the Governor, the Chairman of the Issuer, the Treasurer of State, and shall have affixed, imprinted or lithographed thereon the Great Seal of the State. Interest coupons attached to the Bonds, if any, shall be signed with the facsimile signature of the Treasurer of State. Delivery of the Bonds and coupons so executed shall be valid, notwithstanding any change in persons holding such offices occurring after the Bonds have been executed.

"SECTION 9. The Bonds may be sold in such manner, either at public or private sale, and upon such terms as the Commission shall determine to be reasonable and expedient for effectuating the purposes for which the Commission was created. The Bonds may be sold at a price the Commission may accept, including sale at a discount. The Commission may employ administrative agents, fiscal agents, underwriters, architects, accountants, engineers and legal counsel and may pay them reasonable compensation from the proceeds of the Bonds. The fees of any trustee or paying agent, as well as the costs of publication of notices and of printing of the Bonds, official statements and other documents relating to the sale of the Bonds, and other reasonable costs of issuing and selling the Bonds incurred by the Commission and the Authority may be paid from the proceeds of the Bonds.

"SECTION 10. (a) The proceeds from the sale of the Bonds, together with all revenues derived by the Commission and the Authority from any Project financed or refinanced under this Act, shall be deposited by the recipient thereof, as received, into trust funds in the State Treasury, to accomplish the purposes of this Act, in amounts or portions as set forth in the resolution or trust indenture authorizing or securing the Bonds issued to finance or

refinance the development of Projects. Such proceeds and revenues shall, at the direction of the Issuer, be deposited into trust funds created hereby and designated as follows:

"(1) into the Water, Waste Disposal, Pollution Abatement, Administrative and Research Facilities Construction Fund (the 'Construction Fund'), to provide for the financing, refinancing or development of Projects as provided herein, and the payment of the costs and expenses of the issuance of the Bonds;

"(2) into the Water, Waste Disposal, Pollution Abatement, Administrative and Research Facilities Bond Fund (the 'Bond Fund'), to provide for payment for all or a part of the debt service on Bonds issued under this Act;

"(3) into the Water, Waste Disposal, Pollution Abatement, Administrative and Research Facilities Operation and Maintenance Fund (the 'Operation and Maintenance Fund'), to provide for all or a part of the operation and maintenance of the Projects financed under this Act.

"The Treasurer of State is authorized and directed to establish separate accounts within such funds to correspond to the applicable series of Bonds. In addition, there may be created in the State Treasury such other funds, accounts or subaccounts as the Commission may determine to be necessary to accomplish the purposes of this Act.

"(b) All procedures and methods for the application of proceeds of any series of Bonds to the financing or refinancing of Project Costs shall be set forth in writing, which writings shall be maintained as a part of the records of the Commission. Such procedures and methods may include, but are not limited to, the following:

"(1) Development of Projects to be owned, operated and maintained by the Commission.

"(2) Grants to Local Entities and the Commission.

"(3) Loans to Local Entities or the purchase of bonds or other general or special obligation debt of Local Entities.

"(4) Development of Projects to be leased to or operated by Local Entities.

"(5) Development of Projects to be purchased, at one time or by installment purchase, by Local Entities.

"(6) Establishment of funds, including revolving funds (i.e., funds for the lending

of money to be repaid into such funds) for the development of Projects.

"(7) Matching of proceeds of Bonds with moneys provided by Local Entities, or other Persons.

"(8) Matching of moneys provided pursuant to other laws, including Arkansas Code of 1987 Annotated; Title 15, Chapter 22, Subchapter 5; Title 15, Chapter 22, Subchapter 8; Title 14, Chapter 230, Subchapter 1; Title 15, Chapter 5, Subchapter 10; and Title 15, Chapter 5, Subchapter 9.

"(9) Establishment of funds to refund or refinance Bonds issued under this Act, bonds issued under the Prior Acts and the bonds or other debt of Local Entities which were incurred for the purpose of paying Project Costs.

"(c) Any arrangements undertaken pursuant to (b), above, whereby a Local Entity will administer funds composed in whole or in part of proceeds of Bonds shall include provision for the auditing, no less frequently than annually, of such funds.

"(d) The proceeds from the sale of the Bonds, together with all revenues derived by the Commission and the Authority from any Project financed or refinanced under this Act, may be invested and reinvested by the Treasurer of State in any of the following:

"(1) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America;

"(2) bonds, debentures, notes or other evidences of indebtedness issued or guaranteed by any United States government agencies provided, however, such obligations are backed by the full faith and credit of the United States of America;

"(3) senior debt obligations issued or guaranteed by United States government agencies (non-full faith and credit agencies);

"(4) money market funds investing exclusively in the investments described in clauses (1) through (3) of this subsection;

"(5) certificates of deposit providing for deposits secured at all times by collateral described in clauses (1) through (3) of this subsection. Such certificates must be issued by commercial banks whose deposits are insured by the FDIC and whose collateral must be held by a third party, and

the Treasurer of State, or assigns, must have a perfected first security interest in the collateral;

"(6) certificates of deposit, savings accounts, deposit accounts or money market deposits, all of which are fully insured by the FDIC;

"(7) bonds or notes issued by the State or any municipality, county or school district, community college district or regional solid waste management district in the State, or any agency or instrumentality thereof;

"(8) investment agreements with financial institutions or insurance companies which are rated in one of the two highest rating categories of a nationally recognized rating agency;

"(9) repurchase agreements providing for the transfer of securities from a dealer bank or securities firm (seller/borrower) to the Treasurer of State (buyer/lender), and the transfer of cash from the Treasurer of State to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the Treasurer of State in exchange for the securities at a specified date. Repurchase agreements must satisfy the following criteria:

"(A) Repurchase agreements must be between the Treasurer of State and a dealer bank or securities firm described as follows:

"(i) Dealers with at least \$100 million in capital, or

"(ii) Banks whose deposits are insured by the FDIC.

"(B) The written repurchase agreement contract must include the following:

"(i) Securities which are acceptable for transfer are those listed in clauses (1) through (3) of this subsection.

"(ii) The term of the repurchase agreement may be up to 30 days.

"(iii) The collateral must be delivered to the Treasurer of State, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).

"(iv) Valuation of Collateral: The securities must be valued weekly, marked-to-market at current market price plus accrued interest. The value of collateral must be equal to 103% of the amount of cash transferred by the Treasurer of State

to the dealer bank or security firm under the repurchase agreement plus accrued interest. If the value of securities held as collateral declines below 103% of the value of the cash transferred by the Treasurer of State, then additional cash and/or acceptable securities must be transferred and held by the Treasurer of State.

“(10) any other investment authorized by State law.

“SECTION 11. The Bonds shall be the direct general obligations of the State, for the payment of debt service on which the full faith and credit of the State are hereby irrevocably pledged so long as any such Bonds are outstanding. The Bonds shall be payable from the general revenues of the State, and such amount of general revenues of the State as is necessary is hereby pledged to the payment of debt service on the Bonds, and shall be and remain pledged for such purposes.

“SECTION 12. On or before commencement of each fiscal year, the Chief Fiscal Officer of the State shall determine the estimated amount required for payment of all or a part of the debt service on the Bonds issued under this Act during such fiscal year, after making deductions therefrom of estimated moneys to be available to the Commission from other sources therefor, and shall certify such estimated amount to the Treasurer of State. The Treasurer of State shall then make monthly transfers from the State Apportionment Fund to the Bond Fund, of such amount of general revenues of the State as shall be required to pay the maturing debt service on Bonds issued under this Act.

“The obligation to make monthly transfers of general revenues of the State from the State Apportionment Fund to the Bond Fund shall constitute a first charge against such general revenues of the State prior to all other uses to which such general revenues of the State are devoted, either under present law or under any laws that may be enacted in the future; provided, however, that to the extent other general obligation bonds of the State may have been issued or may subsequently be issued, all such general obligation bonds shall rank on a parity of security with respect to payment from general revenues of the State.

“Moneys credited to the Bond Fund shall be used only for the purpose of

paying debt service on the Bonds, either at maturity or upon redemption prior to maturity, and for such purposes the Treasurer of State is hereby designated Disbursing Officer to administer such funds in accordance with the provisions of this Act.

“Moneys in the Bond Fund over and above the amount necessary to insure the prompt payment of debt service on the Bonds, and the establishment and maintenance of a reserve fund, if any, may be used for the redemption of Bonds prior to maturity in the manner and in accordance with the provisions pertaining to redemption prior to maturity, as set forth in the resolution or trust indenture authorizing or securing the Bonds.

“SECTION 13. All Bonds issued under this Act, and interest thereon, shall be exempt from all State, county and municipal taxes, including income, inheritance and property taxes. The Bonds shall be eligible to secure deposits of all public funds, and shall be legal for investment of bank, fiduciary, insurance company, trust, and public funds.

“SECTION 14. (a) Bonds may be issued under this Act for the purpose of refunding any outstanding bonds issued pursuant to this Act or to refund any outstanding bonds of the Commission issued pursuant to the Prior Acts. The Commission shall not be required to include Bonds issued pursuant to this Section in any written plan submitted to the Governor under Section 2(b) of this Act, and such Bonds shall not be subject to the requirements for the approval and proclamation of the Governor as set forth in Section 2(c).

“(b) The refunding bonds may be either sold for cash or delivered in exchange for the outstanding obligations. If sold for cash, the proceeds may be either applied to the payment of the obligations refunded or deposited in irrevocable trust for the retirement thereof either at maturity or on an authorized redemption date.

“(c) Refunding bonds shall in all respects be authorized, issued, and secured in the manner provided for the bonds being refunded, and shall have all the attributes of the refunded bonds. To the extent that the refunding bonds are not in a greater principal amount than the bonds being refunded, the principal amount of such refunding bonds shall not be subject to the \$300,000,000 limit set forth in Sec-

tion 2 (a) or the \$60,000,000 limit set forth in Section 2(b) of this Act.

"(d) The resolution or trust indenture of the Commission under which the refunding bonds are issued shall provide that any refunding bonds shall have the same priority of payment as was enjoyed by the obligations refunded thereby.

"SECTION 15. The Commission, in addition to powers conferred under other laws, shall have the power under this Act to take such action as may be appropriate to carry out the purposes of this Act, and including the power:

"(a) to develop Projects;

"(b) to operate and maintain Projects;

"(c) to acquire absolute title to and use for any purpose and at any place, water stored in any reservoir, or other impoundment;

"(d) to acquire, collect, impound, store, transport, distribute, sell, furnish and dispose of water to any person at any place;

"(e) to purify, treat and process water;

"(f) to assist Local Entities in the preparation of their premises for the use of water furnished by the Commission and to construct upon such premises Project properties of any kind and character and, in connection therewith, to receive, acquire, endorse, pledge, hypothecate and dispose of notes, bonds, and other evidences of indebtedness;

"(g) to use the bed of any watercourse without adversely affecting existing riparian rights, any highway or any right-of-way, easement or other similar property rights, or any tax forfeited land owned or held by the State or by any political subdivision thereof;

"(h) to provide loans and grants from Bond proceeds or Project revenues to Local Entities for payment of Project Costs in order for the Local Entity receiving such funds to develop a Project;

"(i) to purchase with Bonds proceeds or Project revenues bonds or notes from a Local Entity in order to provide funds for payment of Project Costs in order for the Local Entity receiving such funds to develop a Project, and to enter into note and bond purchase agreements in connection therewith;

"(j) to appropriate amounts from Bond proceeds to satisfy State matching requirements for federal grants, subsidies and revolving loan funds established by the Congress of the United States for the

purpose of facilitating water, waste disposal, water pollution control, abatement and prevention, drainage, irrigation, flood control, wetlands, central administrative and research projects;

"(k) to appropriate amounts from Bond proceeds for the matching of moneys provided pursuant to other laws, including particularly, without limitation, Arkansas Code of 1987 Annotated; Title 15, Chapter 22, Subchapter 5; Title 15, Chapter 22, Subchapter 8; Title 14, Chapter 230, Subchapter 1; Title 15, Chapter 5, Subchapter 10; and Title 15, Chapter 5, Subchapter 9;

"(l) to construct or cause to be constructed, lease as lessee, lease as lessor, and in any manner acquire, own, hold, maintain, operate, sell, dispose of, exchange, mortgage, or lend with respect to all or any part of any Project;

"(m) to acquire, own, hold, use, exercise, sell, mortgage, pledge, hypothecate, and in any manner to dispose of franchises, rights, privileges, licenses, rights-of-way and easements necessary, useful, or appropriate for the exercise of the powers or implementation of the purposes set forth in this Act;

"(n) to sell and convey, mortgage, pledge, lease as lessor, enter into lease-purchase agreements with respect to, and otherwise dispose of all or any part of any Project or other properties, tangible or intangible, including, without limitation, franchises, rights, privileges, licenses, rights-of-way and easements;

"(o) to have and exercise the right of eminent domain for the purpose of acquiring lands (the fee title thereto or any easement, right-of-way or other interest or estate therein) for Projects or portions thereof, by the procedure now provided for condemnation by municipal corporations by Act No. 269 of 1957, as amended, codified as A.C.A. § 18-15-401 et seq.;

"(p) to make or accept gifts or grants of moneys, services, franchises, rights, privileges, licenses, rights-of-way, easements or other property, real or personal or mixed;

"(q) to make any and all contracts necessary or convenient for the exercise of the powers or implementation of the purposes set forth in this Act;

"(r) to fix, regulate and collect rates, fees, rents or other charges for the use of any properties or services furnished by the Commission, and with respect thereto

the Commission shall not be subject to the jurisdiction or control of the Arkansas Public Service Commission;

“(s) to require audits of all accounts related to construction, operation, or maintenance of any Project funded by this Act;

“(t) to take reasonable actions necessary to insure that debt service requirements are met;

“(u) to refinance loans made by the Commission from whatever source to Local Entities in order to develop a Project;

“(v) to provide loans from Bond proceeds or Project revenues to Local Entities for the purpose of refinancing indebtedness of the Local Entity incurred for the purpose of developing a Project;

“(w) to purchase with Bond proceeds or Project revenues bonds or notes from a Local Entity in order to provide funds to refinance indebtedness incurred by a Local Entity for the purpose of developing a Project; and

“(x) to take such other action as may be appropriate to accomplish the purposes of this Act.

“SECTION 16. This Act shall constitute a contract between the State and the registered owners of all Bonds issued hereunder which shall never be impaired, and any violation of its terms, whether under purported legislative authority or otherwise, shall be enjoined by the courts at the suit of any bondholder or any taxpayer. The courts shall, in like suit against the Commission, Authority, the Treasurer of State, or other appropriate agency, officer or official of the State, prevent a diversion of any revenues pledged hereunder and shall compel the restoration of diverted revenues, by injunction or mandamus. Also, and without limitation as to any other appropriate remedy at law or in equity, any bondholder may, by an appropriate action, including without limitation, injunction or mandamus, compel the performance of all covenants and obligations of the State, its officers and officials, hereunder.

“SECTION 17. (a) This Act shall not create any right of any character and no right of any character shall arise under or pursuant to it, unless and until the first series of Bonds authorized by this Act shall have been sold and delivered.

“(b) The issuance of Bonds authorized by this Act shall not impair or affect any

outstanding bonds of the Commission issued pursuant to the Prior Acts.

“SECTION 18. No Bonds shall be issued under this Act except by and with the consent of a majority of the qualified electors of the State voting on the question in substantially the form described in this Section at the general election of 1996 unless the Governor shall, by proclamation, call a special election to be conducted prior thereto. If the question is presented at the general election of 1996, notice thereof shall be published by the Secretary of State in a newspaper of general circulation in the State at least sixty (60) days prior to the general election, and notice thereof shall be mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to the general election.

“If a special election is called by the Governor, the proclamation thereof shall be made at least sixty (60) days prior to the date fixed by such proclamation for the election, and notice of the special election shall be given by publication of the proclamation for one insertion in one newspaper of general circulation published in each county in the State not less than thirty (30) days prior to the date of such election. If there is no newspaper regularly published in a county, the proclamation may be published in any newspaper having a general circulation in the county. It shall not be necessary, in the case of the notice or proclamation for the election, to publish this Act in its entirety, but the notice or proclamation shall state that it is issued for the purpose of submitting to the people substantially the following question:

“Shall the Arkansas Soil and Water Conservation Commission, either directly or through the Arkansas Development Finance Authority, be authorized to issue General Obligation Bonds under the authority of the Arkansas Water, Waste Disposal, Pollution Abatement, Administrative and Research Facilities Financing Act of 1995 in total principal amount not to exceed Three Hundred Million Dollars (\$300,000,000), in series from time to time in principal amounts not to exceed, without prior approval of the General Assembly, Sixty Million Dollars (\$60,000,000) in any fiscal biennium, for the financing and refinancing of the development of water,

waste disposal, water pollution control, abatement and prevention, drainage, irrigation, flood control and wetlands projects, and central administrative and research facilities for the Arkansas Soil and Water Conservation Commission, which Bonds shall be secured by a pledge of the full faith and credit of the State of Arkansas?

"Whether the question is presented at special election or at the general election of 1996, the title of this Act shall be the ballot title, and there shall be printed on the ballot the proposition as stated above, and the following:

"FOR Issuance of General Obligation Bonds _____

"AGAINST Issuance of General Obligation Bonds _____

"The county boards of election commissioners of the several counties of the State shall hold and conduct the election, and each such board is hereby authorized and directed to take such action with respect to the appointment of election officials and such other matters as the law requires; and the vote shall be canvassed and the result thereof declared in each county by such several county boards. The results shall within ten (10) days after the date of the election be certified by such county boards to the Secretary of State who shall forthwith tabulate all returns so received by him and certify to the Governor the total vote for and against the proposition submitted as in this Section provided.

"The result of the election shall be proclaimed by the Governor by publication one time in a newspaper published in the City of Little Rock, Arkansas, and the results as proclaimed shall be conclusive unless attacked in the courts within thirty (30) days after the date of such publication.

"SECTION 19. If a majority of the qualified electors voting on the question shall vote for the issuance of the Bonds, the Commission, either directly or through the Arkansas Development Finance Authority, shall proceed with the sale and the issuance of the Bonds as provided in this Act. If a majority of the qualified electors voting on the question vote against the issuance of the Bonds, none of the Bonds authorized by this Act shall ever be sold or issued, and all provisions of the Act shall be of no further effect.

"SECTION 20. The authority to issue bonds under Section 2 of this Act in an aggregate principal amount not to exceed Three Hundred Million Dollars (\$300,000,000) shall be reduced by the principal amount of bonds issued for non-refunding purposes under the Prior Acts after the effective date of this Act.

"SECTION 21. If, for any reason, any Section or provision of this Act shall be held to be unconstitutional or invalid for any reason, such holding shall not effect the remainder of this Act, but this Act, insofar as it is not in conflict with the Constitution of the State or the Constitution of the United States, shall be permitted to stand, and the various provisions of this Act are hereby declared to be severable for that purpose. Any case involving the validity of this Act or involving the Bonds issued hereunder, shall be deemed of public interest and shall be advanced by all courts and heard as a preferred cause, and all appeals from judgments or decrees rendered in such cases must be taken within thirty (30) days after rendition of such judgment or decree.

"SECTION 22. (a) This Act shall be liberally construed to accomplish the purposes thereof. This Act shall constitute the sole authority necessary to accomplish the purposes hereof, and to this end it shall not be necessary that the provisions of other laws pertaining to the development of public facilities and properties and the financing thereof be complied with.

"(b) This Act shall be interpreted to supplement existing laws conferring rights and powers upon the Commission and the Authority, and the rights and powers set forth herein shall be regarded as alternate methods for the accomplishment of the purposes of this Act.

"(c) Nothing set forth in this Act shall be construed to repeal or to reduce the powers conferred by the Prior Acts.

"SECTION 23. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

"SECTION 24. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision

or application, and to this end the provisions of this act are declared to be severable.

"SECTION 25. All laws and parts of laws in conflict with this Act are hereby repealed."

Acts 1997, No. 607, §§ 1-22, provided: "SECTION 1. This Act may be referred to and cited as the 'Arkansas Water, Waste Disposal and Pollution Abatement Facilities Financing Act of 1997'.

"SECTION 2. (a) The Arkansas Soil and Water Conservation Commission is hereby authorized to issue bonds of the State of Arkansas to be known as State of Arkansas Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bonds (the 'Bonds'), in total principal amount not to exceed Three Hundred Million Dollars (\$300,000,000), for the purposes set forth herein. The Bonds may be issued in one or more series as required subject to the conditions and in compliance with the procedures set forth herein.

"(b) The total principal amount of Bonds to be issued during any fiscal biennium shall not exceed Sixty Million Dollars (\$60,000,000), unless the General Assembly shall, by law, have authorized a greater principal amount thereof to be issued during a fiscal biennium. Provided further that, before any Bonds may be issued during any fiscal biennium the Commission shall submit to the Governor a written plan (1) setting forth the criteria to be used by the Commission in choosing (A) the Projects to be financed with the proceeds derived from the sale of the Bonds and/or (B) the programs for which funds may be provided by the Commission to finance Projects, and (2) requesting authorization for the projected maximum principal amount of Bonds required to be issued in such fiscal biennium. Upon receipt thereof, the Governor shall confer with the Chief Fiscal Officer of the State concerning whether the annual amount of general revenue funds required to be set aside from the General Revenues of the State, as such term is used in the Revenue Stabilization Law of Arkansas, for payment of debt service requirements in connection with the Bonds during either year of the fiscal biennium in which the Bonds are to be issued, would require moneys from the General Revenues of the State that would work undue hardship upon any agency or program supported from

the General Revenues of the State under the provisions of the Revenue Stabilization Law of Arkansas.

"(c) Upon conclusion of such studies, and after obtaining the advice of the Legislative Council thereon, the Governor shall, if he deems the same to be in the public interest, by proclamation, authorize the Commission to proceed with the issuance of the Bonds, in one or more series, up to the maximum principal amount for the fiscal biennium approved by the Governor.

"(d) If the Governor shall decline or refuse to give his approval for the issuance of such Bonds by declining to issue a proclamation approving the issuance, the Governor shall promptly notify the Commission, in writing, and such Bonds shall not be issued. But the Commission may resubmit a request to the Governor for the approval of the issuance of the Bonds. The issue as resubmitted to the Governor shall be dealt with in the same manner as provided for the initial request for authority to issue the Bonds.

"SECTION 3. The Commission may contract with the Authority (1) to act as servicer of any loans made to, or of bonds purchased from, any Local Entities or (2) to perform any other administrative service, activity, undertaking or function of the Commission in connection with the issuance and sale of a particular series of the Bonds. The Commission is authorized to pay the Authority for any services provided by the Authority. Any contract shall be authorized by independent resolutions of the Commission and the Authority.

"SECTION 4. In this Act, unless the context otherwise requires,

"(a) 'Authority' means the Arkansas Development Finance Authority and any successor agency or department.

"(b) 'Commission' means the Arkansas Soil and Water Conservation Commission, and any successor agency or department;

"(c) 'debt service' means principal, interest, redemption premiums, if any, and trustees', paying agents' and dissemination agents' and like servicing fees relative to the Bonds;

"(d) 'develop' means to plan, design, construct, acquire (by purchase or, as set forth herein, by eminent domain), own, operate, rehabilitate, lease as lessor or lessee, enter into lease-purchase agreements with respect to, lend, make grants

in respect of, or install or equip any lands, buildings, improvements, machinery, equipment, or other properties of whatever nature, real, personal or mixed;

"(e) 'drainage' means the removal or diversion of water from lands through natural or artificial means;

"(f) 'FDIC' means the Federal Deposit Insurance Corporation, or any successor thereto insuring deposits of commercial banks;

"(g) 'flood control' means (1) drainage and flood prevention improvements for protection from water-induced damages, (2) adjustments in land use and facilities designed to reduce flood damage from overflow or backwater due to major storms and snowmelt, and (3) facilities designed to collect and convey runoff from rainfall or snowmelt to natural watercourses or previously-modified natural waterways;

"(h) 'General Revenues of the State' means the revenues described and enumerated in Subchapter 2 of the Revenue Classification Law of Arkansas or in any successor law;

"(i) 'irrigation' means the production or transportation of water for agricultural uses through artificial or natural conveyances for watering of crops or other agricultural products;

"(j) 'Local Entity' means any nonprofit corporation, or any county, municipality, conservation district, improvement district, drainage district, irrigation district, levee district, regional water distribution district, public facilities board, rural development authority, regional wastewater treatment district, regional solid waste management district, rural water association or school district in the State or any agency or instrumentality of any of the foregoing, or any agency or instrumentality of the State, including the Commission;

"(k) 'Nationally recognized rating agency' means Moody's Investors Service, Inc., Standard & Poor's Ratings Group, or any other nationally recognized rating agency approved by the State Investing Office;

"(l) 'Person' means any Local Entity or any individual, corporation, trust, limited liability company or partnership;

"(m) 'Pollution abatement' means reduction, prevention, recycling, control or elimination by appropriate methods of

contamination or pollution, or other alteration of the physical, chemical or biological properties, of any land or waters of the State, or of such discharge of any liquid, gaseous or solid substance as will or is likely to create a nuisance or render any land or waters of the State harmful or detrimental or injurious to public health, safety or welfare of individuals, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life;

"(n) 'Prior Acts' means, collectively, Act No. 496 of 1981, as now or hereafter amended, codified as A.C.A. § 15-22-601 et seq., and Act No. 686 of 1987, as now or hereafter amended, codified as A.C.A. § 15-22-701 et seq.;

"(o) 'Project' or 'Projects' means any lands, buildings, improvements, machinery, equipment, or other property, real, personal or mixed, or any combination thereof and programs using such property, developed in pursuance of all or any of the purposes of this Act, including but not limited to the following: (1) the production, impoundment, treatment and transportation of water, (2) the collection, treatment and disposition of waste, (3) pollution abatement programs, (4) drainage or flood control facilities, (5) irrigation facilities, (6) the preservation and development of wetlands, and (7) any facilities authorized by or pursuant to the Prior Acts. Included are Projects for agricultural, administrative, research, residential, recreational, commercial and industrial purposes and Projects for the use and benefit of Local Entities, the Commission and other Persons. Included are facilities and improvements which are necessary, ancillary or related to those enumerated;

"(p) 'Project Costs' means all or any part of the costs of developing any Project, costs incidental or appropriate thereto including, without limitation, all costs to the Commission associated with the development or operation of any Project in a supervisory capacity, and costs incidental or appropriate to the financing thereof, including, without limitation, capitalized interest, costs of issuance of and appropriate reserves for the Bonds, loan or commitment fees, loan or grant administration fees and costs for engineering, legal, and other administrative and consultant services;

"(q) 'Revenue Classification Law of Arkansas' means Act No. 808 of 1973, as now or hereafter amended, codified as A.C.A. § 19-6-101 et seq.;

"(r) 'Revenue Stabilization Law of Arkansas' means Act No. 750 of 1973, as now or hereafter amended, codified as A.C.A. § 19-5-101 et seq.;

"(s) 'State' means the State of Arkansas;

"(t) 'State Apportionment Fund' means the fund by that name created by Subchapter 2 of the Revenue Stabilization Law of Arkansas or in any successor law;

"(u) 'State Investing Office' shall mean the State Treasurer for the investment of any funds established on the books of the State Treasury, and the Commission and/or the Authority for the investment of any funds held outside the State Treasury.

"(v) 'Water' means any waters of the State, including surface water and ground water;

"(w) 'Waste' means any liquid or solid produced as an undesirable byproduct of any activity; and

"(x) 'Wetlands' means land that (1) has a predominance of hydric soils, (2) is inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, and (3) under normal circumstances does support a prevalence of such vegetation.

"SECTION 5. (a) The Bonds shall be issued, in series, as set forth herein, in amounts sufficient to finance or refinance all or any part of Project Costs with the respective series to be designated in alphabetical order and/or by the year in which issued.

"(b) Each series of the Bonds shall have such date as the Commission shall determine and shall mature or be subject to mandatory sinking fund redemption as determined by the Commission, over a period ending not later than thirty-five (35) years after the date of the Bonds of each series. Pending the issuance of Bonds hereunder, the Commission may issue temporary notes, maturing not more than five (5) years from the date of issuance, to be exchanged for or paid from the proceeds of Bonds at such time as the Bonds may be issued.

"(c) Each series of the Bonds shall bear interest, whether or not subject to federal

income taxation, at the rate or rates accepted by the Commission. Interest shall be payable at such times as the Commission shall determine.

"(d) The Bonds may be issued in such form; may be in such denominations; and may be made exchangeable for Bonds of another form or denomination, bearing the same rate of interest and date of maturity; may be made payable at such places within or without the State; may be made subject to redemption prior to maturity in such manner and for such redemption prices; and may contain such other terms and conditions, all as the Commission shall determine.

"(e) The Bonds shall have all the qualities of negotiable instruments or securities under the laws of the State, subject to the provision for registration of ownership.

"SECTION 6. Bonds issued under this Act shall be issued for the purpose of financing (on a temporary or permanent basis), refinancing and developing one or more Projects, and the proceeds of the Bonds shall be applied to the payment of Project Costs and the costs and expenses of issuance of the Bonds, or in connection with a Project refinancing, the repayment of indebtedness incurred to pay Project Costs or for refunding of Bonds as provided in Section 14.

"SECTION 7. (a) The Bonds shall be authorized by resolution of the Commission. Each such resolution shall contain such terms, covenants, and conditions as are deemed desirable, including, without limitation, those pertaining to the establishment and maintenance of funds and accounts, to the deposit and investment of revenues and of Bond proceeds and to the rights and obligations of the State, its officers and officials, the Commission and the registered owners of the Bonds. The resolution of the Commission may provide for the execution and delivery by the Commission of a trust indenture or trust indentures, with one or more banks or trust companies located within or without the State, containing any of the terms, covenants, and conditions referred to above, which trust indenture or trust indentures shall be binding upon the State, and its agencies, officers and officials, to the extent set forth in this Act.

"(b) Any resolution or trust indenture adopted or executed under this Section

shall provide that power is reserved to apply to the payment of debt service on the Bonds issued or secured thereunder all or any part of the revenues which may be derived from any Project financed by such Bonds or financed by the Commission or the Authority in some other manner; and, to the extent of such revenues which the Commission elects to apply to debt service, to release from any requirement of such resolution or trust indenture other revenues and resources of the State, including, without limitation, the General Revenues of the State required to be transferred under Section 12 hereof.

"SECTION 8. Each Bond shall be signed with the manual or facsimile signatures of the Governor, the Chairman of the Commission and the Treasurer of State, and shall have affixed, imprinted or lithographed thereon the Great Seal of the State. Interest coupons attached to the Bonds, if any, shall be signed with the facsimile signature of the Treasurer of State. Delivery of the Bonds and coupons so executed shall be valid, notwithstanding any change in persons holding such offices occurring after the Bonds have been executed.

"SECTION 9. The Bonds may be sold in such manner, either at public or private sale, and upon such terms as the Commission shall determine to be reasonable and expedient for effectuating the purposes for which the Commission was created. The Bonds may be sold at the price the Commission determines acceptable, including sale at a discount. The Commission may employ administrative agents, fiscal agents, underwriters, architects, accountants, engineers and legal counsel and may pay them reasonable compensation from the proceeds of the Bonds. The fees of any trustee or paying agent, as well as the costs of publication of notices and of printing of the Bonds, official statements and other documents relating to the sale of the Bonds, the fees of any rating agency and other reasonable costs of issuing and selling the Bonds incurred by the Commission and the Authority may be paid from the proceeds of the Bonds.

"SECTION 10. (a) The proceeds from the sale of the Bonds, together with all revenues derived by the Commission (i) from any Project financed or refinanced under this Act and appropriated, allocated or otherwise set aside by the Commission

for the payment of the Bonds and (ii) from any other Project and appropriated, allocated or otherwise set aside by the Commission for the payment of the Bonds, shall be deposited by the recipient thereof, as received, into trust funds either established in the State Treasury, or into accounts established outside the State Treasury in the name of the Commission or the Authority, to accomplish the purposes of this Act, in amounts or portions as set forth in the resolution or trust indenture authorizing or securing the Bonds issued to finance or refinance the development of Projects. There is hereby established as a trust fund in the State Treasury an account designated as the Water, Waste Disposal and Pollution Abatement Facilities Bond Fund (the 'Bond Fund'), which is being created to provide for payment of all or a part of the debt service on Bonds issued under this Act.

"The Treasurer of the State is authorized and directed to establish separate accounts and subaccounts within the Bond Fund to correspond to the applicable series of Bonds. In addition, there may be created in the State Treasury such other funds, accounts or subaccounts as the Commission may determine to be necessary to accomplish the purposes of this Act.

"(b) All procedures and methods for the application of proceeds of any series of Bonds to the financing or refinancing of Project Costs shall be set forth in writing, which writings shall be maintained as a part of the records of the Commission. Such procedures and methods may include, but are not limited to, the following:

"(1) Development of Projects to be owned, operated and maintained by the Commission;

"(2) Grants to Local Entities and the Commission;

"(3) Loans to Local Entities or Persons or the purchase of bonds or other general or special obligation debt of Local Entities;

"(4) Development of Projects to be leased to or operated by Local Entities;

"(5) Development of Projects to be purchased, at one time or by installment purchase, by Local Entities;

"(6) Establishment of funds, including revolving funds (i.e., funds for the lending of money to Persons to be repaid into such funds) for the development of Projects;

"(7) Matching of proceeds of Bonds with moneys provided by Local Entities, or other Persons;

"(8) Matching of moneys provided pursuant to other laws, including Arkansas Code of 1987 Annotated Title 15, Chapter 22, Subchapter 5; Title 15, Chapter 22, Subchapter 8; Title 14, Chapter 230, Subchapter 1; Title 15, Chapter 5, Subchapter 10; and Title 15, Chapter 5, Subchapter 9; and

"(9) Establishment of funds to refund or refinance Bonds issued under this Act, bonds issued under the Prior Acts and the bonds or other debt of Local Entities which were incurred for the purpose of paying Project Costs.

"(c) Any arrangements undertaken pursuant to (b), above, whereby a Local Entity will administer funds composed in whole or in part of proceeds of Bonds shall include provision for the auditing, no less frequently than annually, of such funds.

"(d) The proceeds from the sale of the Bonds, together with all revenues derived by the Commission (i) from any Project financed or refinanced under this Act or (ii) from any other Project and appropriated, allocated or otherwise set aside by the Commission for the payment of the Bonds, may be invested and reinvested by the State Investing Office in any of the following:

"(1) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America;

"(2) bonds, debentures, notes or other evidences of indebtedness issued or guaranteed by any United States government agencies provided, however, such obligations are backed by the full faith and credit of the United States of America;

"(3) senior debt obligations issued or guaranteed by United States government agencies (non-full faith and credit agencies);

"(4) money market funds investing exclusively in the investments described in clauses (1) through (3) of this subsection (d);

"(5) certificates of deposit providing for deposits secured at all times by collateral described in clauses (1) through (3) of this subsection (d). Such certificates must be

issued by commercial banks whose deposits are insured by the FDIC and whose collateral must be held by a third party, and the State Investing Office, or assigns, must have a perfected first security interest in the collateral;

"(6) certificates of deposit, savings accounts, deposit accounts or money market deposits, all of which are fully insured by the FDIC;

"(7) bonds or notes issued by the State or any municipality, county or school district, community college district or regional solid waste management district in the State, or any agency or instrumentality thereof;

"(8) investment agreements with financial institutions or insurance companies which are rated in one of the two highest rating categories of a nationally recognized rating agency;

"(9) repurchase agreements providing for the transfer of securities from a dealer bank or securities firm (seller/borrower) to the State Investing Office (buyer/lender), and the transfer of cash from the State Investing Office to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the State Investing Office in exchange for the securities at a specified date. Repurchase agreements must satisfy the following criteria:

"(A) Repurchase agreements must be between the State Investing Office and a dealer bank or securities firm described as follows:

"(i) Dealers with at least \$100 million in capital, or

"(ii) Banks whose deposits are insured by the FDIC.

"(B) The written repurchase agreement contract must include the following:

"(i) Securities which are acceptable for transfer are those listed in clauses (1) through (3) of this subsection.

"(ii) The term of the repurchase agreement may be up to 30 days.

"(iii) The collateral must be delivered to the State Investing Office, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities);

"(iv) Valuation of Collateral: The securities must be valued weekly, marked-to-

market at current market price plus accrued interest. The value of collateral must be equal to 103% of the amount of cash transferred by the State Investing Office to the dealer bank or security firm under the repurchase agreement plus accrued interest. If the value of securities held as collateral declines below 103% of the value of the cash transferred by the State Investing Office, then additional cash and/or acceptable securities must be transferred and held by the State Investing Office; and

“(10) any other investment authorized by State law.

“SECTION 11. The Bonds shall be the direct general obligations of the State, for the payment of debt service on which the full faith and credit of the State are hereby irrevocably pledged so long as any such Bonds are outstanding. The Bonds shall be payable from the General Revenues of the State, and such amount of General Revenues of the State as is necessary is hereby pledged to the payment of debt service on the Bonds, and shall be and remain pledged for such purposes.

“SECTION 12. On or before commencement of each fiscal year, the Chief Fiscal Officer of the State shall determine the estimated amount required for payment of all or a part of the debt service on the Bonds issued under this Act during such fiscal year and deduct therefrom the estimated moneys to be available to the Commission from other sources to determine what amount of General Revenues of the State will be required. The Chief Financial Officer of the State shall certify such estimated amount to the Treasurer of State. The Treasurer of State shall then make monthly transfers from the State Apportionment Fund to the Bond Fund, of such amount of General Revenues of the State as shall be required to pay the maturing debt service on Bonds issued under this Act.

“The obligation to make monthly transfers of General Revenues of the State from the State Apportionment Fund to the Bond Fund shall constitute a first charge against such general revenues of the State prior to all other uses to which such general revenues of the State are devoted, either under present law or under any laws that may be enacted in the future; provided however, that to the extent other general obligation bonds of the State may

have been issued or may subsequently be issued, all such general obligation bonds shall rank on a parity of security with respect to payment from general revenues of the State.

“Moneys credited to the Bond Fund shall be used only for the purpose of paying debt service on the Bonds, either at maturity or upon redemption prior to maturity, and for such purposes the Treasurer of State is hereby designated Disbursing Officer to administer such funds in accordance with the provisions of this Act.

“Moneys in the Bond Fund over and above the amount necessary to insure the prompt payment of debt service on the Bonds, and the establishment and maintenance of a reserve fund, if any, may be used for the redemption of Bonds prior to maturity in the manner and in accordance with the provisions pertaining to redemption prior to maturity, as set forth in the resolution or trust indenture authorizing or securing the Bonds.

“SECTION 13. All Bonds issued under this Act, and interest thereon, shall be exempt from all State, county and municipal taxes, including income, inheritance and property taxes. The Bonds shall be eligible to secure deposits of all public funds, and shall be legal for investment of bank, fiduciary, insurance company, trust, and public funds.

“SECTION 14. (a) Bonds may be issued under this Act for the purpose of refunding any outstanding bonds issued pursuant to this Act or to refund any outstanding bonds of the Commission issued pursuant to the Prior Acts. The Commission shall not be required to include Bonds issued pursuant to this Section in any written plan submitted to the Governor under Section 2(b) of this Act, and such Bonds shall not be subject to the requirements for the approval and proclamation of the Governor as set forth in Section 2(c).

“(b) The refunding bonds may be either sold for cash or delivered in exchange for the outstanding obligations. If sold for cash, the proceeds may be either applied to the payment of the obligations refunded or deposited in irrevocable trust for the retirement thereof either at maturity or on an authorized redemption date.

“(c) Refunding bonds shall in all respects be authorized, issued, and secured in the manner provided for the bonds

being refunded, and shall have all the attributes of the refunded bonds. To the extent that the refunding bonds are not in a greater principal amount than the outstanding principal amount of the bonds being refunded, the principal amount of such refunding bonds shall not be subject to the \$300,000,000 limit set forth in Section 2 (a) or the \$60,000,000 limit set forth in Section 2(b) of this Act.

“(d) The resolution or trust indenture under which the refunding bonds are issued shall provide that any refunding bonds shall have the same priority of payment as was enjoyed by the obligations refunded thereby.

“SECTION 15. The Commission, in addition to powers conferred under other laws, shall have the power under this Act to take such action as may be appropriate to carry out the purposes of this Act, and including the power:

“(a) to develop Projects;

“(b) to operate and maintain Projects;

“(c) to acquire absolute title to and use for any purpose and at any place, water stored in any reservoir, or other impoundment;

“(d) to acquire, collect, impound, store, transport, distribute, sell, furnish and dispose of water to any person at any place;

“(e) to purify, treat and process water;

“(f) to assist Local Entities in the preparation of their premises for the use of water furnished by the Commission and to construct upon such premises Project properties of any kind and character and, in connection therewith, to receive, acquire, endorse, pledge, hypothecate and dispose of notes, bonds, and other evidences of indebtedness;

“(g) to use the bed of any watercourse without adversely affecting existing riparian rights, any highway or any right-of-way, easement or other similar property rights, or any tax forfeited land owned or held by the State or by any political subdivision thereof;

“(h) to provide loans and grants from Bond proceeds or Project revenues to Local Entities and to authorize Local Entities to make loans to other Persons, for payment of Project Costs in order for the Local Entity receiving such funds to develop a Project;

“(i) to purchase with Bonds proceeds or Project revenues bonds or notes from a Local Entity in order to provide funds for

payment of Project Costs in order for the Local Entity receiving such funds to develop a Project, and to enter into note and bond purchase agreements in connection therewith;

“(j) to appropriate amounts from Bond proceeds to satisfy State matching requirements for federal grants, subsidies and revolving loan funds established by the Congress of the United States for the purpose of facilitating water, waste disposal, pollution control, abatement and prevention, drainage, irrigation, flood control and wetlands projects;

“(k) to appropriate amounts from Bond proceeds for the matching of moneys provided pursuant to other laws, including particularly, without limitation, Arkansas Code of 1987 Annotated Title 15, Chapter 22, Subchapter 5; Title 15, Chapter 22, Subchapter 8; Title 14, Chapter 230, Subchapter 1; Title 15, Chapter 5, Subchapter 10; and Title 15, Chapter 5, Subchapter 9;

“(l) to construct or cause to be constructed, lease as lessee, lease as lessor, and in any manner acquire, own, hold, maintain, operate, sell, dispose of, exchange, mortgage, or lend with respect to all or any part of any Project;

“(m) to acquire, own, hold, use, exercise, sell, mortgage, pledge, hypothecate, and in any manner to dispose of franchises, rights, privileges, licenses, rights-of-way and easements necessary, useful, or appropriate for the exercise of the powers or implementation of the purposes set forth in this Act;

“(n) to sell and convey, mortgage, pledge, lease as lessor, enter into lease-purchase agreements with respect to, and otherwise dispose of all or any part of any Project or other properties, tangible or intangible, including, without limitation, franchises, rights, privileges, licenses, rights-of-way and easements;

“(o) to have and exercise the right of eminent domain for the purpose of acquiring lands (the fee title thereto or any easement, right-of-way or other interest or estate therein) for Projects or portions thereof, by the procedure now provided for condemnation by municipal corporations by Act No. 269 of 1957, as now or hereafter amended, codified as A.C.A. § 18-15-401 et seq.;

“(p) to make or accept gifts or grants of moneys, services, franchises, rights, privileges, licenses, rights-of-way, easements

or other property, real or personal or mixed;

"(q) to make any and all contracts necessary or convenient for the exercise of the powers or implementation of the purposes set forth in this Act;

"(r) to fix, regulate and collect rates, fees, rents or other charges for making any loan or commitment under this Act, for performing accounting and loan servicing duties relating to such loans and for the use of any properties or services furnished by the Commission, and with respect thereto the Commission shall not be subject to the jurisdiction or control of the Arkansas Public Service Commission;

"(s) to require audits of all accounts related to construction, operation, or maintenance of any Project funded by this Act;

"(t) to take reasonable actions necessary to insure that debt service requirements are met;

"(u) to refinance loans made by the Commission from whatever source to Local Entities in order to develop a Project;

"(v) to provide loans from Bond proceeds or Project revenues to Local Entities for the purpose of refinancing indebtedness of the Local Entity incurred for the purpose of developing a Project;

"(w) to purchase with Bond proceeds or Project revenues bonds or notes from a Local Entity in order to provide funds to refinance indebtedness incurred by a Local Entity for the purpose of developing a Project; and

"(x) to take such other action as may be appropriate to accomplish the purposes of this Act.

"SECTION 16. This Act shall constitute a contract between the State and the registered owners of all Bonds issued hereunder which shall never be impaired, and any violation of its terms, whether under purported legislative authority or otherwise, shall be enjoined by the courts at the suit of any bondholder or any taxpayer. The courts shall, in like suit against the Commission, the Treasurer of State, or other appropriate agency, officer or official of the State, prevent a diversion of any revenues pledged hereunder and shall compel the restoration of diverted revenues, by injunction or mandamus. Also, and without limitation as to any other appropriate remedy at law or in equity, any bondholder may, by an appro-

priate action, including without limitation, injunction or mandamus, compel the performance of all covenants and obligations of the State, its officers and officials, hereunder.

"SECTION 17. (a) This Act shall not create any right of any character and no right of any character shall arise under or pursuant to it, unless and until the first series of Bonds authorized by this Act shall have been sold and delivered.

"(b) The issuance of Bonds authorized by this Act shall not impair or affect any outstanding bonds of the Commission issued pursuant to the Prior Acts.

"SECTION 18. No Bonds shall be issued under this Act except by and with the consent of a majority of the qualified electors of the State voting on the question in substantially the form described in this Section at the general election of 1998 unless the Governor shall, by proclamation, call a special election to be conducted prior thereto. If the question is presented at the general election of 1998, notice thereof shall be published by the Secretary of State by one insertion in a newspaper of general circulation in the State at least sixty (60) days prior to the general election, and notice thereof shall be mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to the general election.

"If a special election is called by the Governor, the proclamation thereof shall be made at least sixty (60) days prior to the date fixed by such proclamation for the election, and notice of the special election shall be given by publication of the proclamation for one insertion in one newspaper of general circulation published in each county in the State not less than thirty (30) days prior to the date of such election. If there is no newspaper regularly published in a county, the proclamation may be published in any newspaper having a general circulation in the county. It shall not be necessary, in the case of the notice or proclamation for the election, to publish this Act in its entirety, but the notice or proclamation shall state that it is issued for the purpose of submitting to the people substantially the following question:

"Shall the Arkansas Soil and Water Conservation Commission be authorized to issue General Obligation Bonds under

the authority of the Arkansas Water, Waste Disposal and Pollution Abatement Facilities Financing Act of 1997 in total principal amount not to exceed Three Hundred Million Dollars (\$300,000,000), in series from time to time in principal amounts not to exceed, without prior approval of the General Assembly, Sixty Million Dollars (\$60,000,000) in any fiscal biennium, for the financing and refinancing of the development of water, waste disposal, water pollution control, abatement and prevention, drainage, irrigation, flood control and wetlands projects to serve the citizens of the State of Arkansas, which Bonds shall be secured by a pledge of the full faith and credit of the State of Arkansas?

"Whether the question is presented at special election or at the general election of 1998, the title of this Act shall be the ballot title, and there shall be printed on the ballot the proposition as stated above, and the following:

"FOR Issuance of State of Arkansas Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bonds _____

"AGAINST Issuance of State of Arkansas Water, Waste Disposal and Pollution Abatement Facilities General Obligation Bonds _____

"The county boards of election commissioners of the several counties of the State shall hold and conduct the election, and each such board is hereby authorized and directed to take such action with respect to the appointment of election officials and such other matters as the law requires; and the vote shall be canvassed and the result thereof declared in each county by such several county boards. The results shall within ten (10) days after the date of the election be certified by such county boards to the Secretary of State who shall forthwith tabulate all returns so received by him and certify to the Governor the total vote for and against the proposition submitted as in this Section provided.

"The result of the election shall be proclaimed by the Governor by publication one time in a newspaper published in the City of Little Rock, Arkansas, and the results as proclaimed shall be conclusive unless attacked in the courts within thirty (30) days after the date of such publication.

"SECTION 19. If a majority of the

qualified electors voting on the question shall vote for the issuance of the Bonds, the Commission shall proceed with the sale and the issuance of the Bonds as provided in this Act. If a majority of the qualified electors voting on the question vote against the issuance of the Bonds, none of the Bonds authorized by this Act shall ever be sold or issued, and all provisions of the Act shall be of no further effect.

"SECTION 20. The authority to issue bonds under Section 2 of this Act in an aggregate principal amount not to exceed Three Hundred Million Dollars (\$300,000,000) shall be reduced by the principal amount of bonds issued for non-refunding purposes under the Prior Acts after the effective date of this Act.

"SECTION 21. If, for any reason, any Section or provision of this Act shall be held to be unconstitutional or invalid for any reason, such holding shall not effect the remainder of this Act, but this Act, insofar as it is not in conflict with the Constitution of the State or the Constitution of the United States, shall be permitted to stand, and the various provisions of this Act are hereby declared to be severable for that purpose. Any case involving the validity of this Act or involving the Bonds issued hereunder, shall be deemed of public interest and shall be advanced by all courts and heard as a preferred cause, and all appeals from judgments or decrees rendered in such cases must be taken within thirty (30) days after rendition of such judgment or decree.

"SECTION 22. (a) This Act shall be liberally construed to accomplish the purposes thereof. This Act shall constitute the sole authority necessary to accomplish the purposes hereof, and to this end it shall not be necessary that the provisions of other laws pertaining to the development of public facilities and properties and the financing thereof be complied with.

"(b) This Act shall be interpreted to supplement existing laws conferring rights and powers upon the Commission, and the rights and powers set forth herein shall be regarded as alternate methods for the accomplishment of the purposes of this Act.

"(c) Nothing set forth in this Act shall be construed to repeal or to reduce the powers conferred by the Prior Acts."

RESEARCH REFERENCES

Ark. L. Rev. *Lex Aquae Arkansas*, 27 Ark. L. Rev. 429.

Looney, Modification of Arkansas Water Law: Issues and Alternatives, 38 Ark. L. Rev. 221.

U. Ark. Little Rock L.J. Trelease, A Water Management Law For Arkansas, 6 U. Ark. Little Rock L.J. 369.

Comment, Arkansas at the Water Crossroads: Regulations or Solutions?, 7 U. Ark. Little Rock L.J. 401.

The Law of Water Allocation in the Southeastern States at the Opening of the Twenty-First Century, 25 U. Ark. Little Rock L. Rev. 9 (2002).

Arkansas Water Rights: Review and Consideration for Reform, 25 U. Ark. Little Rock L. Rev. 123 (2002).

Interstate Water Allocation: A Contemporary Primer for Eastern States, 25 U. Ark. Little Rock L. Rev. 155 (2002).

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — ALLOCATION AND USE GENERALLY

SECTION.

- 15-22-201. Declaration of policy.
- 15-22-202. Definitions.
- 15-22-203. Cumulative effect.
- 15-22-204. Penalties — Enforcement.
- 15-22-205. Powers of commission regarding waters.
- 15-22-206. Procedure for making rules, regulations, and orders — Meetings.
- 15-22-207. Administration of oath to witnesses.
- 15-22-208. Subpoenas — Refusal to testify.
- 15-22-209. Appellate review.
- 15-22-210. Permits required for dam construction — Conditions for issuance.
- 15-22-211. Permits — Application.
- 15-22-212. Permits — Notice of application — Hearing.

SECTION.

- 15-22-213. Permits — Modification or cancellation.
- 15-22-214. Exemptions.
- 15-22-215. Certificates of registration — Water diversion — Exceptions.
- 15-22-216. Right to take impounded water.
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- 15-22-218. Right to acquire title and use water stored in a governmental reservoir.
- 15-22-219. Fees.
- 15-22-220. Continued water use study.
- 15-22-221. Delegation of allocation authority.
- 15-22-222. Minimum stream flows.
- 15-22-223. Protection of service areas.

A.C.R.C. Notes. References to “this subchapter” in §§ 15-22-201 — 15-22-221 may not apply to §§ 15-22-222 and 15-22-223 which were enacted subsequently.

Cross References. Arkansas Natural Resources Commission, § 15-20-201 et seq.

Tax credit for construction of soil and water conserving impoundments and control structures, § 26-51-1001 et seq.

Preambles. Acts 1969, No. 217 contained a preamble which read: “Whereas, the State of Arkansas is in urgent need of an updated, comprehensive water and related lands management program for the protection of the public interest of the entire state with respect to its water resources, including boundary waters; and
“Whereas, local areas within the state are in need of additional water resource

development essential to their continued economic development; and

"Whereas, federally financed water projects are dependent upon state and local participation...."

Effective Dates. Acts 1957, No. 81, § 17: Feb. 25, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that a lack of adequate water supplies at certain periods of each year for the past number of years has caused, among other things, crop failures, power shortages, shortages in the supply of water necessary for human consumption, and other general economic disadvantages to the people of Arkansas, and that the provisions of this Act are necessary to correct and alleviate such conditions. An emergency is therefore declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1963, No. 14, § 18: Feb. 8, 1963. Emergency clause provided: "It has been found that notwithstanding the fact that the Commission will not have the functions performable by it hereunder until April 1, 1963, it is necessary that immediate action be taken by the Governor to appoint, and by the Senate to confirm the appointment of, the members of the Commission in order that the Commission may organize and begin to prepare its plan of operations so that there may be no disruption of service on and after that date, and that only by the immediate operation of this act may such condition be obviated. Therefore, an emergency is

hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1969, No. 180, § 7: approved Mar. 7, 1969. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the present systems with respect to granting permits for the construction of dams on streams and for the allocation of waters during periods of shortages in the supply of water necessary for human consumption and other beneficial uses are cumbersome and time consuming, resulting in unnecessary procedures and economic disadvantages to the people of Arkansas, and that the provisions of this act are necessary to correct and alleviate such conditions; therefore, an emergency is declared to exist, and this act, being necessary for the protection of the public peace, health and safety of the state, shall take effect and be in full force from and after its passage."

Acts 1993, Nos. 657 and 942, § 7: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that additional funding is necessary to maintain the efficient delivery of services provided by the Soil and Water Conservation Commission and further delay in providing for additional funding may work irreparable harm on the commission's ability to provide its services. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Looney, An Update on Arkansas Water Law: Is the Riparian Rights Doctrine Dead?, 43 Ark. L. Rev. 573.

Looney, Enhancing the Role of Water Districts in Groundwater Management

and Surface Water Utilization in Arkansas, 48 Ark. L. Rev. 643.

U. Ark. Little Rock L.J. Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

15-22-201. Declaration of policy.

(a) In recognition of the fact that there is rainfall over the State of Arkansas in rainy seasons more than ample to provide sufficient

surface water for the use of persons in this state during those seasons, that most of this surplus water is now wasted and completely lost, and does damage to fertile soil while being wastefully lost, and that during other periods the supply of surface water has been and may be inadequate for needed use, it is declared to be the policy of the State of Arkansas to encourage and provide methods for conserving surplus surface water for future use.

(b) To that end, it is declared to be the purpose of this subchapter to permit and regulate the construction of facilities to store surplus surface water for future use, to protect the rights of all persons equitably and reasonably interested in the use and disposition of surface water, to maintain the normal flow of all streams and preserve the fish therein, to prevent harmful overflows and flooding, and to conserve the natural resources of the State of Arkansas.

History. Acts 1957, No. 81, § 1; A.S.A. 1947, § 21-1301.

15-22-202. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Natural Resources Commission;

(2) "Conservation district" means conservation districts created under the Conservation Districts Law, § 14-125-101 et seq.;

(3) "Diffused surface water" means water occurring naturally on the surface of the ground other than in natural channels, lakes, or ponds;

(4) "District" means a conservation district or regional water district;

(5) "Domestic use" means the use of water for ordinary household purposes, including human consumption, washing, watering of domestic livestock, poultry, and animals, and watering of home gardens for consumption by the household;

(6) "Minimum streamflow" means the quantity of water required to meet the largest of the following instream flow needs as determined on a case-by-case basis:

(A) Interstate compacts;

(B) Navigation;

(C) Fish and wildlife;

(D) Water quality; and

(E) Aquifer recharge;

(7) "Ordinary high watermark" means the line delimiting the bed of a stream from its bank, that line at which the presence of water is continued for such length of time as to mark upon the soil and vegetation a distinct character;

(8) "Person" means any natural person, partnership, firm, association, cooperative, municipality, county, public or private corporation, and any state or local governmental agency;

(9) "Regional water district" means a regional water distribution district created under The Regional Water Distribution District Act, § 14-116-101 et seq.; and

(10) "Stream" means a stream of water and its channel, including springs, lakes, or marshes in which the stream originates or through which it flows, where the stream flows in a reasonably definite channel, excluding a depression, swale, or gully, through which diffused water flows.

History. Acts 1957, No. 81, § 2; 1963, No. 14, § 15; 1969, No. 180, § 1; A.S.A. 1947, § 21-1302; Acts 1989, No. 469, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Looney, Dif- Time for a New Rule?, 18 U. Ark. Little fused Surface Water in Arkansas: Is It Rock L.J. 3.

15-22-203. Cumulative effect.

(a) The provisions of this subchapter shall be cumulative of all existing statutes of this state with respect to matters governed by this subchapter and shall not be construed to repeal any statute or provision thereof.

(b) However, the construction and maintenance of a dam in accordance with the provisions of this subchapter shall be lawful, and no work for the construction of a dam on any stream shall be done without a permit from the Arkansas Natural Resources Commission issued in accordance with the provisions of this subchapter.

History. Acts 1957, No. 81, § 11; A.S.A. 1947, § 21-1311.

15-22-204. Penalties — Enforcement.

(a)(1) Any person who violates any provision of this subchapter shall be guilty of a misdemeanor and subject to imprisonment not to exceed six (6) months or a fine not to exceed ten thousand dollars (\$10,000), or both.

(2) For a continuing offense, each day during which the offense is committed shall be considered a separate violation.

(b) The Arkansas Natural Resources Commission shall enforce its regulations and orders by any or all of the following means:

(1) Revocation of any permit or suspension from any program administered by the commission;

(2) Suit for injunction or for damages, or both; and

(3) Civil penalties not to exceed ten thousand dollars (\$10,000).

(c) All penalties received shall go to the Arkansas Water Development Fund.

History. Acts 1957, No. 81, § 13; 1969, No. 217, § 16; A.S.A. 1947, § 21-1313; Acts 1989, No. 258, § 2; 1991, No. 786, § 16.

Publisher's Notes. Acts 1991, No. 786,

§ 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 78th General Assembly. All such acts shall have full effect and, so far

as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987.”

15-22-205. Powers of commission regarding waters.

(a) The Arkansas Natural Resources Commission shall have the power to:

- (1) Issue permits for the construction of dams to impound water;
 - (2) Issue certificates of registration of water diverted from streams;
- and

(3) Make allocations among persons taking water from streams during periods of shortage, to the extent and in the manner provided by law.

(b) To that end, the commission shall conduct hearings and promulgate rules, regulations, and orders under the procedure prescribed in this subchapter.

History. Acts 1957, No. 81, § 4; 1963, No. 14, § 18; 1969, No. 180, § 2; 1985, No. 475, § 1; A.S.A. 1947, § 21-1304.

CASE NOTES

Jurisdiction.

Lower riparian owners, who alleged that the upper riparian owners constructed a dam which wrongfully impounded waters on their land and obstructed the flow of water, should have

sought their remedy before the Soil and Water Conservation Commission rather than filing the original action in chancery court. *Styers v. Johnson*, 19 Ark. App. 312, 720 S.W.2d 334 (1986).

15-22-206. Procedure for making rules, regulations, and orders — Meetings.

(a)(1)(A) No rule, regulation, or order, including a change, renewal, or extension thereof, shall be made by the Arkansas Natural Resources Commission except after reasonable notice and public hearing with respect thereto.

(B) If matters to be considered at a meeting are of general application throughout the state, the meeting shall be held in Little Rock, and notice with respect thereto shall be published in a newspaper of general circulation throughout the state.

(C) If the purpose of the meeting relates only to waters within one (1) county, that meeting shall be held in the county involved, and notice of the meeting shall be published in a newspaper of general circulation in that county.

(D) If the purpose of the meeting is with respect to waters in more than one (1) county, the meeting shall be held in one (1) of those counties, and notice shall be published in one (1) or more newspapers which together have general circulation in all of the counties involved.

(2) The notice, with respect to any meeting, shall state the time and place at which the meeting will be held and the matters to be considered by the commission at that meeting.

(b)(1) If the commission elects to give notice to any person by personal service, the service shall be made by the sheriff of the county in which the meeting is to be held, by one (1) of his or her deputies, or by any agent of the commission.

(2) Proof of service shall be by the affidavit of the person making personal service.

(c)(1) Each rule, regulation, and order made by the commission shall be in writing and shall be entered in full in a book to be kept by the commission for such a purpose. The book shall be a public record and be open to inspection at all times during reasonable office hours.

(2) A copy of any such rule, regulation, or order, certified by a member of the commission or the Executive Director of the Arkansas Natural Resources Commission, shall be received in evidence in all courts of this state with the same effect as the original.

History. Acts 1957, No. 81, § 5; 1985, No. 475, § 2; A.S.A. 1947, § 21-1305.

15-22-207. Administration of oath to witnesses.

Any member of the Arkansas Natural Resources Commission or the Executive Director of the Arkansas Natural Resources Commission or attorney shall have power to administer an oath to any witness in any hearing, investigation, or proceeding under the provisions of this subchapter.

History. Acts 1957, No. 81, § 3; 1963, No. 14, § 18; A.S.A. 1947, § 21-1303.

15-22-208. Subpoenas — Refusal to testify.

(a) The Arkansas Natural Resources Commission or any member thereof is empowered to issue a subpoena for any witness to require his or her attendance and the giving of testimony before the commission and to require the production of books, papers, and records in any proceeding before the commission which may be material to questions lawfully before the commission.

(b) The subpoena shall be served by:

(1) The sheriff of the county in which the person subpoenaed resides;

(2) The sheriff's deputy; or

(3) Any other officer authorized by law to serve process in this state.

(c) If any person fails or refuses to comply with a subpoena issued by the commission or any member thereof or refuses to testify or answer to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the person is domiciled, on application of the commission, may:

(1) In term time or vacation, issue an attachment for the person;

(2) Compel him or her to:

- (A) Comply with the subpoena;
- (B) Appear before the commission;
- (C) Produce the documents;

(D) Give his or her testimony upon such matters as may be lawfully required; and

(3) Punish for contempt any person who fails to obey any such order, as in a case of disobedience of a like subpoena issued by or from that court or for refusal to testify therein.

(d) With respect to any such person who is not domiciled in Arkansas, the circuit court of the county in which the hearing involved is being held or is to be held shall have jurisdiction.

History. Acts 1957, No. 81, § 5; A.S.A. 1947, § 21-1305.

15-22-209. Appellate review.

Any person affected by any rule, regulation, or order made by the Arkansas Natural Resources Commission or action taken may obtain review of such an action pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1957, No. 81, § 12; 1969, No. 180, § 5; A.S.A. 1947, § 21-1312; Acts 1989, No. 258, § 3.

15-22-210. Permits required for dam construction — Conditions for issuance.

No person shall have the right to construct or own a dam to impound water for any purpose unless and until he or she obtains a permit from the Arkansas Natural Resources Commission to construct or own that dam on the following conditions:

(1) Any permit granted shall be on the condition that the dam constructed under it shall be:

(A) So constructed and operated that:

(i) There will be impounded only surplus surface waters thereby; and

(ii) There shall be discharged each day from the water impounded by it a quantity of water as may be fixed by the commission as that necessary to preserve, from time to time, below the dam, the flow of any stream involved at a rate designed to protect the rights of any lower riparian owner and the fish and wildlife dependent thereon; and

(B) Constructed in such manner and maintained in such condition as to:

(i) Preserve the life of the dam and reservoir for the period of time for which the permit is issued; and

(ii) Adequately protect the lives and property of those persons downstream from the site of the dam;

(2)(A) Any representative of the commission shall have the right, at any time, to enter upon the land upon which the dam is built or is to be built to inspect work of construction thereof and the maintenance and operation of the dam after construction.

(B) If the commission determines that the dam is unsafe, it shall request in writing that the owner of the dam perform such repair as the commission deems necessary to assure the safety of the dam.

(C) If the owner fails to perform adequate repair within a reasonable period of time, as determined by the commission, the commission shall cause the dam to be repaired or breached or cause any other necessary action to be taken, and the cost incurred by the commission in performing such a repair shall be a lien against the property whereupon the dam is located.

(D) The commission shall perfect the lien by filing a notice of the lien with the circuit clerk of the county wherein the dam is located.

(E) The notice shall constitute a lien as of the date of the expenditure of the moneys by the commission.

(F) The lien shall have priority second only to the lien of real estate taxes imposed upon the dam.

(G) Further, no action shall be brought against the state or the commission or its agents or employees for the recovery of damages caused by the partial or total failure of any dam or reservoir or through the operation of any dam or reservoir upon the grounds that the defendant is liable by virtue of any of the following:

(i) The approval of the dam or reservoir or approval of flood-handling plans during construction;

(ii) The issuance or enforcement of orders relative to maintenance and operation of the dam or reservoir;

(iii) Control and regulation of the dam or reservoir; or

(iv) Measures taken to protect against failure during an emergency;

(3)(A) Each permit, with reasonable definiteness, shall describe the location of the dam and the land necessary for impounding water by means thereof.

(B) No dam shall be constructed or operated so as to impound water on any land other than on land which the applicant for the construction thereof owns or has the right to occupy during the period for which the permit is issued.

(C) Any person who constructs and maintains a dam under the provisions of this subchapter shall have the right to occupy land in the bed of any stream, which land is owned by the state, and is required to impound the water impounded by the dam;

(4)(A) The permit shall be for a period fixed by the commission not less than that found by the commission to be necessary to permit amortization of reasonable indebtedness, if any, incurred in connection with the construction of the dam, but in no event in excess of fifty (50) years.

(B) Any such permit, for good cause shown, may be extended by the commission by order entered not more than five (5) years prior to

the expiration of that permit, the extension of the permit to be for an additional period to be fixed by the commission. The additional period shall in no event extend longer than fifty (50) years; and

(5)(A) Within six (6) months after title to any dam for which a permit is issued under the provisions of this subchapter is purchased or inherited by, or otherwise becomes vested in any person not holding a permit to own and operate the dam, the transferee of the title shall so notify the commission, which shall immediately issue a new permit to the transferee.

(B) Otherwise, the permit issued hereunder shall terminate six (6) months following the transfer of title, during which time the transferee will not be deemed in violation of this subchapter.

History. Acts 1957, No. 81, § 6; 1969, No. 180, § 3; 1983, No. 339, § 1; 1985, No. 475, § 3; A.S.A. 1947, § 21-1306; Acts 1987, No. 592, § 1.

Publisher's Notes. The 1983 amendment to subdivision (2) of this section provided, in part, that nothing in that

subsection should be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam or reservoir.

Cross References. Dam construction, rights-of-way, § 18-15-510.

CASE NOTES

ANALYSIS

Dam Construction.
Permits.

Dam Construction.

Lower riparian owners, who alleged that the upper riparian owners constructed a dam which wrongfully impounded waters on their land and obstructed the flow of water, should have sought their remedy before the Soil and Water Conservation Commission rather than filing the original action in chancery

court. *Styers v. Johnson*, 19 Ark. App. 312, 720 S.W.2d 334 (1986).

Permits.

Although the upper riparian owners complied with the statutory requirements in obtaining the permit for a dam, and the lower riparian owners failed to file an objection concerning the dam with the Soil and Water Conservation Commission, the lower riparian owners did not lose their right to question the commission's action in granting the permit. *Styers v. Johnson*, 19 Ark. App. 312, 720 S.W.2d 334 (1986).

15-22-211. Permits — Application.

(a) The applicant for a dam construction permit shall file with the Arkansas Natural Resources Commission upon a form prescribed by the commission an application accompanied by plans and specifications for the construction and manner of operation and maintenance of the dam.

(b) The commission shall examine the plans and specifications of the dam and conduct other necessary investigations for the granting or denial of the permit, including inspection of the site of the proposed construction.

(c) The application for a dam construction permit shall be accompanied by the dam permit application review fee as specified in § 15-22-219.

History. Acts 1957, No. 81, § 6; 1969, No. 180, § 3; A.S.A. 1947, § 21-1306; Acts 1989, No. 685, § 1.

15-22-212. Permits — Notice of application — Hearing.

(a)(1) Upon receipt of the application and before granting or denying the permit, the Arkansas Natural Resources Commission shall cause notice of the filing thereof to be published for two (2) weeks in a newspaper published and having a general circulation in each county wherein the dam and area necessary for the impounding of water by means thereof is located.

(2) The notice, with reasonable definiteness, shall describe the size and location of the proposed dam and reservoir and shall call upon all interested persons having questions or objections pertaining thereto and desiring public hearing thereon to make their questions or objections known within twenty (20) days after publication of the notice to the commission in writing, including their names and post office addresses.

(b)(1) Upon the expiration of twenty (20) days after the notice provided in subsection (a) of this section, the commission shall grant the permit.

(2) However, should a hearing be requested as provided in subsection (a) of this section or desired by the commission, the commission shall schedule a public hearing and, by certified mail, return receipt requested, shall notify the applicant and all interested persons of the date, time, and place thereof, after which it shall either grant or, for good cause shown, deny the permit.

History. Acts 1957, No. 81, § 6; 1969, No. 180, § 1; A.S.A. 1947, § 21-1306.

15-22-213. Permits — Modification or cancellation.

Any permit or an extension thereof issued by the Arkansas Natural Resources Commission may be modified or cancelled by order of the commission after notice and hearing upon the failure of the person holding the permit to maintain the dam adequately or to comply substantially with any condition of the permit with respect to its operation.

History. Acts 1957, No. 81, § 6; 1969, No. 180, § 3; 1985, No. 475, § 3; A.S.A. 1947, § 21-1306.

15-22-214. Exemptions.

(a) No permit shall be required for any dam which impounds less than fifty (50) acre-feet of water or is of a height less than twenty-five feet (25').

(b) No permit shall be required for any dam the height of which is at or below the ordinary high water mark on the stream.

(c) A permit shall be required of a dam exempted from a permit under subsection (a) or (b) of this section if, upon petition by persons affected and after notice and hearing, the Arkansas Natural Resources Commission determines that the proposed dam would pose a significant threat to life or property.

History. Acts 1957, No. 81, § 10; 1969, No. 180, § 4; 1985, No. 475, § 4; A.S.A. 1947, § 21-1310; Acts 1989, No. 685, § 2.

CASE NOTES

Exemptions.

Where the record reflected that the upper riparian owners' dam obstructed the flow of water in a stream, the upper ripar-

ian owners were not exempt under subsection (b) of this section. *Styers v. Johnson*, 19 Ark. App. 312, 720 S.W.2d 334 (1986) (decision under prior law).

15-22-215. Certificates of registration — Water diversion — Exceptions.

(a) Any person diverting water from any stream, lake, or pond, except those natural lakes or ponds in the exclusive ownership of one (1) person, shall register the diversion with the Arkansas Natural Resources Commission or his or her local conservation district.

(b) Each registration shall set forth:

(1) The name and post office address of the registrant;

(2) The source of water supply and location of the point of diversion, the manner of diversion, whether a dam is utilized, and the size and location of any such dam;

(3) The purpose for the water diversion;

(4) The estimated quantity of water diverted for direct use and the quantity of water stored away from the point of diversion for use when needed;

(5) The location of the land on which the water is used, and, if for irrigation, the area and legal description of the lands irrigated, which may be depicted by the use of appropriate maps, and the kinds of crops cultivated under irrigation during the year;

(6) The times during the water year that the water was diverted; and

(7) Any other reasonable information requested by the commission in the performance of its duties under the laws of the State of Arkansas.

(c)(1) The registration shall be based upon a water year, the twelve-month period beginning October 1 and ending the next September 30.

(2) Registrations shall be submitted annually no later than March 1 for the prior water year.

(d) After the initial registration, persons whose water use remains unchanged from the prior year need only report no change in water use.

(e) Upon receipt of the registration by the commission, it shall be the duty of the commission to furnish to the registrant a certificate of

registration containing all the information as set forth by the registrant.

(f)(1) In any proceeding before any court or the commission for the adjudication of rights to divert water from any stream, lake, or pond, no party shall be granted any allocation of water above that required for domestic use unless he or she has complied with the provisions of this section.

(2) However, this section shall not operate to allow a nonriparian use of water to supersede, subordinate, or otherwise take priority or precedence over a riparian right to divert water from a stream, lake, or pond.

(g)(1) Any person who fails to register a diversion as required by subsections (a) and (b) of this section shall be subject to a late reporting fee of not more than five hundred dollars (\$500) for each year he or she fails to register.

(2) At the direction of the commission, the Attorney General or the commission's counsel shall bring suit on the relation of the State of Arkansas for the collection of the fee.

(3) All fees received shall go to the Arkansas Water Development Fund.

History. Acts 1957, No. 81, § 18, as added by Acts 1969, No. 180, § 6; A.S.A. 1947, § 21-1316; Acts 1989, No. 408, § 1.

15-22-216. Right to take impounded water.

(a) Any person constructing a dam under permit issued under the provisions of this subchapter shall have the exclusive right to take water from the reservoir created by that dam so long as the dam is maintained and operated under permit from the Arkansas Natural Resources Commission, subject to his or her obligation to discharge water from the dam as provided in the permit, and shall have the right to exclude all persons from the water impounded by that dam.

(b)(1) However, if the dam causes water to be impounded unlawfully on land which the person maintaining the dam does not own or have the right to occupy, the owner of the land so unlawfully occupied shall have the right to take water from the impoundment at a point on his or her land, so long as the water is unlawfully impounded on his or her land.

(2)(A) The owner of land so unlawfully occupied by impounded waters, in addition to the right to use the water as provided in subdivision (b)(1) of this section, may have the right to recover in an action at law all damages resulting from the unlawful trespass.

(B) The cause of action shall not accrue until the land shall be actually unlawfully occupied by water thus impounded.

History. Acts 1957, No. 81, § 7; A.S.A. 1947, § 21-1307.

15-22-217. Allocation during shortages.

(a) Whenever a shortage of water in any stream or part thereof exists to the extent that there is not sufficient water in the stream to meet the requirements of all water needs, on its own initiative or on the petition of any person affected by the shortage of water and after notice and hearing, the Arkansas Natural Resources Commission may allocate the available water from the stream among the uses of water affected by the shortage of water in a manner that each of the needs affected by the shortage of water may obtain an equitable portion of the available water.

(b) In allocating water in such a case, the commission may consider the use that each person involved is to make of the water allocated to that person.

(c) In making such allocations of water, reasonable preferences shall be given to different uses, in the following order of preference:

- (1) Sustaining life;
- (2) Maintaining health; and
- (3) Increasing wealth.

(d) Water needs shall include domestic and municipal water supply needs, agricultural and industrial water needs, and navigational, recreational, fish and wildlife, and other ecological needs.

(e) The following priorities shall be reserved prior to allocation:

- (1) Domestic and municipal domestic;
- (2) Minimum streamflow; and
- (3) Federal water rights.

History. Acts 1957, No. 81, § 8; A.S.A. 1947, § 21-1308; Acts 1989, No. 469, § 2; 1991, No. 786, § 17.

Publisher's Notes. As to the effect of

Acts 1991, No. 786 on the acts passed at the regular session of the 78th General Assembly, see Publisher's Note to § 15-22-204.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Arkansas Water Rights: Review and Consideration for Reform, 25 U. Ark. Little Rock L. Rev. 123 (2002).

Of Cows, Canoes, and Commerce: How the Concept of Navigability Provides an

Answer If You Know Which Question to Ask, 25 U. Ark. Little Rock L. Rev. 175 (2002).

CASE NOTES**Jurisdiction.**

Lower riparian owners, who alleged that the upper riparian owners constructed a dam which wrongfully impounded waters on their land and obstructed the flow of water, should have

sought their remedy before the Soil and Water Conservation Commission rather than filing the original action in chancery court. *Styers v. Johnson*, 19 Ark. App. 312, 720 S.W.2d 334 (1986).

15-22-218. Right to acquire title and use water stored in a governmental reservoir.

(a) Any person shall have, to the full extent that the State of Arkansas can grant that right, the right to acquire absolute title to and use for any purpose water allocated for local use and stored in any reservoir created by the construction of a multipurpose dam by the United States Army Corps of Engineers for the United States Government or any agency thereof.

(b) The right shall vest in the person upon his or her compliance with the following conditions:

(1) Upon filing with the Arkansas Natural Resources Commission a notice of intent to negotiate and contract with the United States Government for the withdrawal of water from the reservoir; and

(2) Upon the person executing a contract with the United States Government or any agency thereof for the withdrawal of water from the reservoir and filing the contract with the commission.

(c)(1) The notice of intent shall set forth in detail the name of the person who is filing the notice and the place of the reservoir.

(2) The act of filing the notice of intent shall empower the person to negotiate and contract with the United States Government or any agency thereof for the water.

(d) Any person who has acquired title to and use of water stored in a United States Government reservoir shall:

(1) File with the commission a certified copy of the contract made with the United States Government for the withdrawal of water; and

(2) Annually thereafter file with the commission a detailed report of the amount of water withdrawn and for what purpose the water is used.

History. Acts 1957, No. 81, § 9; A.S.A. 1947, § 21-1309.

15-22-219. Fees.

(a)(1) Any person applying for a permit and having plans and specifications examined under § 15-22-211, in consideration therefor, shall pay to the Arkansas Natural Resources Commission an initial dam permit application review fee equal to one percent (1%) of the estimated cost of construction for the dam, which in any case shall not be less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(2) The dam permit application review fee shall be assessed as an initial fee upon application for the dam permit or upon a major modification of a dam requiring the issuance of a revised permit.

(b)(1) Any person obtaining a permit under the provisions of § 15-22-210, in consideration therefor, shall pay to the commission a fee equal to twelve cents (12¢) per acre-foot of water which the dam involved is designed to impound, but not less than twenty-five dollars (\$25.00) nor more than ten thousand dollars (\$10,000).

(2) The permit shall provide that the same fee shall be paid by that person to the commission each year thereafter during which the dam is maintained, on or before the anniversary date of the issuance of the permit.

(c) The fees in subsections (a) and (b) of this section shall be deposited by the commission in the Arkansas Water Development Fund to be used by the commission as provided by law and shall not be paid into the State Treasury.

History. Acts 1957, No. 81, § 14; 1963, 1989, No. 685, § 3; 1993, No. 657, § 1; No. 106, § 1; A.S.A. 1947, § 21-1314; Acts 1993, No. 942, § 1.

15-22-220. Continued water use study.

The Arkansas Natural Resources Commission shall gather and compile, from time to time, information as to the use of surface water in this state and the needs of the citizens of this state for surface water, that the information may be available to officials of this state and to its citizens.

History. Acts 1957, No. 81, § 15; A.S.A. 1947, § 21-1315.

15-22-221. Delegation of allocation authority.

(a) The Arkansas Natural Resources Commission may delegate the power to allocate water during times of shortage, as provided in this subchapter, to conservation districts and regional water districts.

(b)(1) A district to which the commission has delegated its authority to allocate water during shortages shall have all powers under this subchapter and shall be governed by the procedures set out in this subchapter.

(2) The commission shall provide technical assistance and shall establish guidelines which shall be followed by districts to which the commission has delegated powers.

(c)(1) The commission shall have all the necessary power to effectuate this delegation, including, but not limited to, the power to determine disputes between, approve or disapprove regulations of, and hear appeals from decisions of districts to which the commission has delegated powers.

(2) The commission may reserve any or all power in itself and may withdraw its delegation of power at any time.

History. Acts 1989, No. 469, § 6.

15-22-222. Minimum stream flows.

(a) The Arkansas Natural Resources Commission shall establish and enforce minimum stream flows for the protection of instream water needs.

(b)(1) Prior to the establishment of minimum stream flows, the Arkansas Natural Resources Commission shall notify by certified mail, return receipt requested, the Arkansas State Game and Fish Commission, the Arkansas Department of Environmental Quality, and any other interested state boards and commissions.

(2) Within thirty (30) days of receipt of notice, the Arkansas State Game and Fish Commission and the Arkansas Department of Environmental Quality shall file written comments with the Arkansas Natural Resources Commission.

(c) In establishing minimum stream flows, the Arkansas Natural Resources Commission shall follow the procedure for rulemaking, including publishing notice and the conducting of a public hearing.

(d) Nothing in this section shall be construed to override any other duties or powers of the Arkansas Natural Resources Commission.

History. Acts 1989, No. 469, § 5.

may not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to "this subchapter" in §§ 15-22-201 — 15-22-221

15-22-223. Protection of service areas.

(a) It is unlawful for a person to provide water or wastewater services to an area where such services are being provided by the current provider that has pledged or utilizes revenue derived from services within the area to repay financial assistance provided by the Arkansas Natural Resources Commission, unless approval for such activity has been given by the commission and the new provider has received approval under the Arkansas Water Plan established in § 15-22-503, if applicable.

(b)(1) As a condition of its approval, the commission may require the payment of an equitable portion of the outstanding financial assistance provided.

(2)(A) Any payment made shall reduce the outstanding balance of the financial assistance provided by the commission to the current provider.

(B) To determine the amount of payment, the commission shall base its approval on the following factors:

(i) The impact of the transfer of the area on the current provider's existing indebtedness and its ability to repay the debt;

(ii) The value, including depreciation, of the current provider's facilities in the area to be transferred;

(iii) The amount of any expenditures by the current provider for planning, design, or construction of service facilities outside the area, including without limitation treatment, transmission, and storage facilities, that are directly and reasonably allocable to the area to be transferred;

(iv) Any demonstrated impairment of service or increase in cost, including without limitation operation and maintenance, to consumers of the current provider remaining after the transfer of the area;

(v) The impact of future lost revenues from the current provider's existing consumers in the area to be transferred, but only until the indebtedness is retired;

(vi) Necessary and reasonable legal expenses and professional fees; and

(vii) Other relevant factors as determined by the commission.

(3) Upon enactment of this section, financial assistance provided by the commission for potable water or wastewater projects shall be provided only to:

(A) The state, counties, cities, towns, or their agencies or instrumentalities; and

(B) Nonprofit corporations existing on August 1, 1997.

(c) The commission or other parties may institute a civil action in the circuit court of the county where the unlawful activities have or will likely occur to:

(1) Restrain such activities;

(2) Compel compliance with the provisions of this section; and

(3) Recover all costs and expenses incurred as a result of violations of this section.

(d) Nothing in this subchapter limits the applicable federal law.

(e)(1) The state may require that if a borrower of water loans or wastewater loans is able to refinance the amount of the indebtedness to any government lender then outstanding, in whole or in part, by obtaining a loan for the same purpose from a responsible cooperative or private source at a reasonable rate and under reasonable terms for similar loans, then the borrower shall:

(A) Apply for and accept the loan in sufficient amount to repay the government lender; and

(B) Take all actions required in connection with the loan.

(2) Subdivision (e)(1) of this section shall also apply if a borrower seeks financing from the state for any water project or wastewater project that is not currently funded by a government lender.

History. Acts 1997, No. 698, § 1; 2007, No. 691, § 1; 2009, No. 779, § 2.

A.C.R.C. Notes. References to “this subchapter” in §§ 15-22-201 to 15-22-221 may not apply to this section which was enacted subsequently.

Amendments. The 2007 amendment, in (a), substituted “Natural Resources” for “Soil and Water Conservation” and added “and the new provider has received approval un-

der the Arkansas Water Plan, § 15-22-503, if applicable” at the end; redesignated former (b)(2) as present (b)(2)(A); added (b)(2)(B); and added (d) and (e).

The 2009 amendment inserted “including without limitation treatment, transmission, and storage facilities” in (b)(2)(B)(iii), inserted “including without limitation operation and maintenance” in (b)(2)(B)(iv), and made related changes.

SUBCHAPTER 3 — DETERMINATION OF WATER USE REQUIREMENTS

SECTION.

15-22-301. Duties of commission.

15-22-302. Withdrawal of underground water — Annual reports.

15-22-303. Out-of-state transportation and use of water.

SECTION.

15-22-304. Transfer of excess surface water to nonriparians.

Effective Dates. Acts 1997, No. 317, § 8: Mar. 3, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Agriculture and Economic Development and in its place established separate House and Senate Committees; that various sections of the Arkansas Code refer to the Joint Interim Committee on Agriculture and Economic Development and should be corrected to refer to the House and Senate Interim Committees; that this act so provides; and that this act should go

into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Rev. Looney, An Update on Arkansas Water Law: Is the Riparian

Rights Doctrine Dead?, 43 Ark. L. Rev. 573.

15-22-301. Duties of commission.

The Arkansas Natural Resources Commission shall:

(1) Inventory the surface water resources and underground water resources within this state;

(2) Determine the surface water requirements for fish and wildlife;

(3) Determine the surface water requirements for navigation;

(4) Establish minimum stream flows;

(5) Determine the water needs of public water supplies;

(6) Determine the water needs for industry;

(7) Determine the water needs for agriculture, taking into account the decreasing groundwater tables and the resulting future needs for surface water to augment groundwater supplies;

(8) Determine the water needs of all other users;

(9) Propose a definition of critical water areas and delineate areas which are now critical or which will be critical within the next thirty (30) years;

(10) Define the term "excess surface water" and determine the quantity of the excess surface water within the state and where it is located;

(11) Define the term "safe yield" of a stream, river, or river basin, and a groundwater aquifer;

(12) Report periodically to the House Committee on Agriculture, Forestry, and Economic Development and the Senate Committee on Agriculture, Forestry, and Economic Development;

(13) Declare and delineate surplus or excess surface water areas within the state based on a determination that surface water in a defined geographic area is in excess of the amount required for the foreseeable economic development needs of the defined geographic area;

(14) Develop guidelines for evaluation of any proposed interbasin transfers in order that the areas of origin would be protected from serious adverse effects during periods of low streamflow; and

(15) Develop guidelines for determining the amount of compensation, if any, to interested parties within the area of origin who incur damages as a result of a proposed transfer, including claims of individual water rights holders, adverse effects upon the political subdivisions involved, and adverse environmental effects.

History. Acts 1985, No. 1051, § 2; A.S.A. 1947, § 9-128.1; Acts 1997, No. 317, § 4.

A.C.R.C. Notes. The House Interim Committee on Agriculture, Forestry, and Economic Development and the Senate Interim Committee on Agriculture, Forestry, and Economic Development, re-

ferred to in this section, were formerly known as the House Interim Committee on Agriculture and Economic Development and the Senate Interim Committee on Agriculture and Economic Development, respectively. Acts 2001, No. 960, § 1, effected the name change.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Arkansas for Reform, 25 U. Ark. Little Rock L. Rev. Water Rights: Review and Consideration 123 (2002).

15-22-302. Withdrawal of underground water — Annual reports.

(a) All persons who withdraw underground water, except from individual household wells used exclusively for domestic use and except from wells having a maximum potential flow rate of less than fifty thousand (50,000) gallons per day, shall report to their local conservation district or the Arkansas Natural Resources Commission the following:

(1) If the water is used for agricultural irrigation:

(A) The number and size of wells;

(B) The crops and acreage irrigated; and

(C) The legal description of the lands irrigated, which may be depicted by the use of appropriate maps;

(2) If the water is used for other than agricultural irrigation:

(A) The number and size of wells;

(B) The name of the water user and the location of the use; and

(C) The use of the water and the quantity used; and

(3) Any other reasonable information requested by the commission in the performance of its duties under the laws of the State of Arkansas.

(b)(1) The reports shall be submitted annually no later than March 1, indicating the water usage for the prior water year.

(2) After the initial report, persons whose water use remains unchanged from the prior water year need only report no change in water use.

(3) A “water year” is a twelve-month period beginning October 1 and ending the next September 30.

(c)(1) Any person who fails to report a withdrawal of underground water as required by subsection (a) of this section shall be subject to a

late registration fee of not more than five hundred dollars (\$500) for each year he or she fails to register.

(2) At the direction of the commission, the Attorney General or the commission's counsel shall bring suit on the relation of the State of Arkansas for the collection of the fee.

(3) All fees received shall go to the Arkansas Water Development Fund.

History. Acts 1985, No. 1051, § 1; A.S.A. 1947, § 9-129; Acts 1987, No. 460, § 1; 1989, No. 408, § 2.

15-22-303. Out-of-state transportation and use of water.

(a) The State of Arkansas has long recognized the importance of the conservation of the waters within this state and the necessity to maintain adequate water supplies to meet the state's present and future water requirements. The state also recognizes that under appropriate conditions, out-of-state transportation and use of its waters is not in conflict with the public welfare of its citizens or the conservation of its waters.

(b) Any person or entity desiring to withdraw water from any water source within this state and transport it for use outside the state shall so notify the Arkansas Natural Resources Commission. The commission shall research the request and recommend to the General Assembly at its next regular session whether the transfer would be in the public interest of the citizens of this state.

(c) In arriving at its conclusion, the commission shall consider, among other things, the following factors:

- (1) The supply of water available in the State of Arkansas;
- (2) The present and future water demands of water users in this state;
- (3) Whether there are water shortages within the state;
- (4) Whether the water that is the subject of the proposed transfer could feasibly be transported to alleviate water shortages within this state;

(5) The supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(6) The demands placed upon the applicant's supply in the state where the applicant intends to use the water.

(d) No water may be stored, withdrawn, or diverted for use outside the State of Arkansas unless approved by the General Assembly and by interstate compact under the provisions of § 15-20-207. However, this prohibition does not apply to marketers of bottled water.

History. Acts 1985, No. 1051, § 4; A.S.A. 1947, § 9-130.

A.C.R.C. Notes. As enacted by Acts 1985, No. 1051, § 4, subsection (b) contained additional language which read as follows: "(2) Public water supply systems

furnishing water at any time during the 1984 calendar year for municipal or domestic use to municipalities or public water supply systems not located within the State of Arkansas."

15-22-304. Transfer of excess surface water to nonriparians.

(a) The Arkansas Natural Resources Commission may authorize the transportation of excess surface water to nonriparians of such surface water for their use.

(b) "Excess surface water" means twenty-five percent (25%) of that amount of water available on an average annual basis from any watershed above that amount, as determined by the commission, required to satisfy all of the following:

- (1) Existing riparian rights as of June 28, 1985;
- (2) The water needs of federal water projects existing on June 28, 1985;
- (3) The firm yield of all reservoirs in existence on June 28, 1985;
- (4) Maintenance of instream flows for fish and wildlife, water quality, aquifer recharge requirements, and navigation; and
- (5) Future water needs of the basin of origin as projected in the state water plan developed pursuant to §§ 15-20-207 and 15-22-501 et seq.

(c) All applications for transfer of water to nonriparians shall be evaluated by the commission in terms of the reasonableness of the proposed nonriparian use, including, but not limited to:

- (1) The availability at reasonable cost of alternative sources of water for the proposed use;
- (2) The environmental impact of the proposed transfer; and
- (3) The nature and extent of the impact of the transfer on other water uses.

(d)(1) As a condition of granting the transfer authority, the commission may require the applicants to contract for the transportation of a specific quantity of water, for a specific period, at a reasonable price to users within the immediate vicinity of the proposed route of transportation.

(2) The term "reasonable price" means only the cost of transportation of the water, not the water itself.

(e) For purposes of transfer of the excess surface water, as defined in subsection (b) of this section, in the White River Basin, the transfer amount shall not exceed on a monthly basis an amount which is fifty percent (50%) of the monthly average of each individual month of excess surface water.

History. Acts 1985, No. 1051, § 5;
A.S.A. 1947, § 9-131; Acts 1995, No. 838,
§§ 8, 9.

RESEARCH REFERENCES

Ark. L. Rev. Looney, Enhancing the Management and Surface Water Utilization in Arkansas, 48 Ark. L. Rev. 643.

SUBCHAPTER 4 — ABANDONED OR UNUSED ARTESIAN WELLS**SECTION.**

15-22-401. Scope.

15-22-402. Notice to judge of nearby
abandoned or unused well

SECTION.

by person with inadequate
well.

15-22-403. Notice to owners of land con-

SECTION.

taining abandoned or unused well.

15-22-404. Sealing of well by judge upon failure of landowner.

15-22-405. Filing of expense statement by judge.

15-22-406. Expense statements recorded

SECTION.

as part of landowner's deed.

15-22-407. Prohibition on recording deed before payment of expenses.

15-22-408. Deposit of collected sums.

Preambles. Acts 1949, No. 478 contained a preamble which read: "Whereas, many home owners have homes equipped with modern plumbing facilities depending upon artesian wells for such facilities' usefulness; and

"Whereas, other persons have drilled wells for temporary use; and

"Whereas, such wells have been abandoned leaving them to flow without ceasing thereby dissipating the pressure in the neighboring home owner's well, to the irreparable damage to such home owner;

"Now, therefore, it becomes necessary for the State of Arkansas to take appropriate steps to correct such abuse...."

15-22-401. Scope.

The provisions of this subchapter shall apply to artesian wells abandoned prior to passage and approval of this act.

History. Acts 1949, No. 478, § 8; A.S.A. 1947, § 21-1108.

Meaning of "this act". Acts 1949, No. 478, codified as §§ 15-22-401 — 15-22-408.

Publisher's Notes. In reference to the term "passage and approval of this act," Acts 1949, No. 478, was signed by the Governor on March 29, 1949, and became effective on June 9, 1949.

15-22-402. Notice to judge of nearby abandoned or unused well by person with inadequate well.

When any real estate owner or tenant who depends or may depend upon an artesian well for his or her home water supply discovers that the artesian well water pressure has become inadequate to accommodate the existing plumbing facilities of his or her home and the owner or tenant knows or has reason to believe that there is an abandoned, unused artesian well within one (1) mile, by the most direct route, of the home, the homeowner or tenant shall notify the county judge of his or her county of the lowered water pressure and petition the county judge to take appropriate action as provided by this subchapter.

History. Acts 1949, No. 478, § 1; A.S.A. 1947, § 21-1101.

15-22-403. Notice to owners of land containing abandoned or unused well.

Any county judge receiving notice as provided by § 15-22-402 shall ascertain from the record of deeds the owner of the land on which is

situated any abandoned artesian well, and the county judge shall notify the property owner by registered letter, with return receipt requested, of the complaint and shall apprise the owner of the provisions of this subchapter.

History. Acts 1949, No. 478, § 2; A.S.A. 1947, § 21-1102.

15-22-404. Sealing of well by judge upon failure of landowner.

Any owner of property on which an abandoned well, as defined by § 15-22-402, is situated who fails to seal the well within ten (10) days after receipt of notice as provided by § 15-22-403 shall suffer the penalty of having the well sealed by the county judge or county employees under the judge's supervision.

History. Acts 1949, No. 478, § 3; A.S.A. 1947, § 21-1103.

15-22-405. Filing of expense statement by judge.

Any county judge sealing or directing the sealing of any artesian well shall file an expense statement on behalf of the county in the amount of one hundred dollars (\$100) with the county recorder of deeds.

History. Acts 1949, No. 478, § 4; A.S.A. 1947, § 21-1104.

15-22-406. Expense statements recorded as part of landowner's deed.

Any and all expense statements filed with the recorder of deeds shall be filed by him or her and recorded as a part of the deed of the land upon which a well as described in § 15-22-405 is situated.

History. Acts 1949, No. 478, § 5; A.S.A. 1947, § 21-1105.

15-22-407. Prohibition on recording deed before payment of expenses.

It shall be unlawful for any recorder of deeds to record a deed or allow the same to be done by any deputy without first demanding and procuring payment of all items of expense on record as provided in §§ 15-22-405 and 15-22-406.

History. Acts 1949, No. 478, § 6; A.S.A. 1947, § 21-1106.

15-22-408. Deposit of collected sums.

Any sums collected by the recorder of deeds as provided in § 15-22-407 shall be deposited by the recorder within ten (10) days with the county treasurer in the general revenue fund.

History. Acts 1949, No. 478, § 7; A.S.A. 1947, § 21-1107.

SUBCHAPTER 5 — WATER DEVELOPMENT PROJECTS GENERALLY

SECTION.	SECTION.
15-22-501. Definitions.	15-22-507. Arkansas Water Development Fund.
15-22-502. Construction — Surveys, reports, etc.	15-22-508 — 15-22-510. [Repealed.]
15-22-503. Arkansas Water Plan.	15-22-511. Exemption of commission property from mortgages and forced sales.
15-22-504. Publication and availability of plan.	15-22-512. Tax exemptions for commission property.
15-22-505. Powers and duties of commission generally.	15-22-513. Use of appropriated funds.
15-22-506. Cooperation with state or federal agencies — Project costs.	15-22-514. Disposition of fees, earnings, etc.

Preambles. Acts 1969, No. 217 contained a preamble which read: “Whereas, the State of Arkansas is in urgent need of an updated, comprehensive water and related lands management program for the protection of the public interest of the entire state with respect to its water resources, including boundary waters; and
“Whereas, local areas within the state are in need of additional water resource development essential to their continued economic development; and
“Whereas, federally financed water projects are dependent upon state and local participation....”

Effective Dates. Acts 1975, No. 555, § 7[8]: July 1, 1975. Emergency clause provided: “It is hereby found and determined by the Seventieth General Assembly that the provisions of this act are necessary for the development of the states water resources, and to delay the effective date of this act beyond July 1, 1975 would work irreparable harm on the states water resources. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1975.”

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

15-22-501. Definitions.

As used in this subchapter:
(1) “Commission” means the Arkansas Natural Resources Commission; and

(2) "Water development project" means the construction, acquisition, ownership, replacement, operation, and maintenance of facilities, including land, easements, and works of improvement, for the protection, conservation, preservation, development, utilization, and proper disposal of the state's water resources and related land resources in order to:

(A) Provide for the people of the state adequate supplies of quality water for municipal, industrial, agricultural, recreational, and domestic purposes, water for navigation, and access to the state's lakes and streams, and parks and other recreational sites along their shores; and

(B) Reclaim, preserve, and protect the state's land resources and to adequately protect the wealth of the state from disastrous floods.

History. Acts 1969, No. 217, § 1; 1973, No. 584, § 1; A.S.A. 1947, § 21-1317.

15-22-502. Construction — Surveys, reports, etc.

(a) Nothing in this subchapter shall be so construed as to impair or restrict the right of any municipality, drainage district, water district, county, or other political subdivision or agency of this state to cooperate with the United States or any department or agency thereof with respect to planning water development projects, nor to impair or prevent the consummation of any contract between local interests and agencies of the federal government respecting any existing or planned water development project as of August 7, 1969, by requiring any other or additional assurances, approvals, or contracting parties.

(b)(1) Nothing in this subchapter shall be construed to repeal, amend, alter, or affect any of the laws now governing levee or drainage districts or any of the powers, functions, and duties of the respective boards of any levee or drainage district in this state.

(2) However, each levee or drainage district shall file with the Arkansas Natural Resources Commission a copy of any preliminary survey or report for any water development project being undertaken by the levee or drainage district as provided in § 15-22-503 and may otherwise cooperate with the commission under the provisions of this subchapter.

History. Acts 1969, No. 217, §§ 6, 17; A.S.A. 1947, §§ 21-1322, 21-1331.

15-22-503. Arkansas Water Plan.

(a) Under such rules and regulations as it may adopt, the Arkansas Natural Resources Commission is charged with the duty of preparing, developing, formulating, and engaging in a comprehensive program for the orderly development and management of the state's water and related land resources, to be referred to as the "Arkansas Water Plan".

(b) The commission shall be governed in its preparation of the plan by a regard for the public interest of the entire state. It shall direct its efforts to protect the water resources of the state, including boundary waters, against unwarranted encroachments by other states and the United States upon its sovereignty with respect thereto. Any attempt to transport or export any of such waters against the best interests of the State of Arkansas and its inhabitants shall be strongly opposed.

(c) The plan shall give due consideration to existing water rights of the state and its inhabitants and shall take into account modes and procedures for the equitable adjustment of individual water rights affected by the implementation of the plan. The plan shall be the state policy for the development of water and related land resources in this state and, from time to time, shall be altered, amended, or repealed to the extent necessary for the proper administration of the state's water resources.

(d) All state agencies, commissions, and political subdivisions shall take the plan into consideration in all matters pertaining to the discharge of their respective duties and responsibilities as they may affect the comprehensive plan, but nothing in the plan shall be construed as to impair any water right existing under the laws of this state.

(e)(1) No political subdivision or agency of the state shall spend any state funds on or engage in any water development project, excluding any project in which game protection funds or federal or state outdoor recreation assistance grant funds are to be spent, provided that such a project will not diminish the benefits of any existing water development project, until a preliminary survey and report therefor which sets forth the purpose of the project, the benefits to be expected, the general nature of the works of improvement, the geographic area to be served by the project, the necessity, feasibility, and the estimated cost thereof is filed with the commission and is approved by the commission to be in compliance with the plan.

(2) Upon approval of the report, no political subdivision or agency board or commission thereof filing the report or designated by the commission as having responsibility for constructing, operating, managing, and maintaining the improvement shall be dissolved, merged, abolished, or otherwise changed during the life of the water development project without prior approval of the commission.

History. Acts 1969, No. 217, § 2; 1973, No. 584, § 2; A.S.A. 1947, § 21-1318; Acts 1989, No. 469, § 3; 2007, No. 691, § 2.

Amendments. The 2007 amendment substituted "Natural Resources" for "Soil and Water Conservation" in (a); and in-

serted "the geographic area to be served by the project" following "improvement" in (e).

Cross References. Arkansas Water Plan, § 14-116-402(b).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Arkansas for Reform, 25 U. Ark. Little Rock L. Rev. 123 (2002).
Water Rights: Review and Consideration

CASE NOTES**Approval of Water Development Project.**

Because the Arkansas Soil and Water Conservation Commission acted within its statutory authority under subsection (e) of this section in approving a water project submitted by a municipality that included a portion of a neighboring city's five-mile extraterritorial planning area, which was not preempted under § 14-56-413 by the neighboring municipality's

planning authority in the five-mile area surrounding its city limits, and because the Commission's decision was supported by substantial evidence, the appellate court affirmed the Commission's order approving the municipality's water development project, as amended, for water plan compliance certification. Ark. Soil & Water Conservation Comm'n v. City of Bentonville, 351 Ark. 289, 92 S.W.3d 47 (2002).

15-22-504. Publication and availability of plan.

(a) In accordance with §§ 15-20-207, 15-22-204, and 15-22-501, the Arkansas Natural Resources Commission shall publish an "Arkansas Water Plan", which shall from time to time be revised, updated, and amended as new information, projects, and developments shall occur.

(b) The plan shall be made available to all interested state agencies, departments, commissions, and individuals in order to ensure that the provisions of this subchapter are complied with concerning water resource planning and development.

History. Acts 1975, No. 555, § 2; A.S.A. 1947, § 21-1332.

CASE NOTES

Cited: Ark. Soil & Water Conservation Comm'n v. City of Bentonville, 351 Ark. 289, 92 S.W.3d 47 (2002).

15-22-505. Powers and duties of commission generally.

In addition to such other powers, authorities, and duties as are provided to it by law, the Arkansas Natural Resources Commission shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this subchapter, including, but not limited to, the following powers and duties:

(1) To be responsible for the proper distribution and allocation of water stored in the ownership of the state as developed by the commission under the provisions of this subchapter;

(2) To approve a reasonable method of delivery and measurement of water sold from storage;

(3) To sell, assign, or lease water or water storage capacity at costs designed to return the investment to the state and to sufficiently

discharge as they mature all obligations pertaining to the principal of and interest on any water development bonds issued by the commission;

(4)(A) To make and execute contracts for financial assistance to political subdivisions of the State of Arkansas which are engaged as local sponsors of any water development project which is an integral part of the Arkansas Water Plan.

(B) The financial assistance shall be funded by the Arkansas Water Development Fund established under § 15-22-507 and may consist of long-term loans designed to return the investment to the state, or the financial assistance may consist of the underwriting of local assurances for the payment of water development project costs;

(5) To acquire by lease, purchase, gift, devise, or otherwise water rights, water storage capacity, and the facilities of any water development project, including lands, rights-of-way, and easements;

(6)(A) To invest any cash funds of the fund by converting the funds into bonds of the United States or into certificates of deposit in banks or savings and loan associations qualifying for the deposit of public funds.

(B) However, if any condition shall arise whereof the investment of federal funds is restricted by the federal government, such federal funds may not be invested;

(7)(A) To adopt and enforce such rules and regulations as are necessary for the proper and efficient administration of this subchapter.

(B) However, all rules and regulations adopted by the commission are subject to judicial review in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and

(8) To institute a civil action in the Pulaski County Circuit Court or in the circuit court of the county where the water development project is located to restrain any political subdivision or agency of the state from spending any state funds from any source on or engaging in any water development project which has not been approved as in compliance with the plan, to compel compliance with the provisions of this subchapter, and to recover all costs and expenses of the commission and any inappropriately spent state funds.

History. Acts 1969, No. 217, § 5; 1973, No. 584, § 4; A.S.A. 1947, § 21-1321; Acts 1989, No. 469, § 4; 1997, No. 360, § 2.

15-22-506. Cooperation with state or federal agencies — Project costs.

(a) The Arkansas Natural Resources Commission is authorized to engage in any water development project or any phase thereof in cooperation with any political subdivision or agency of the State of Arkansas, provided it is included in and made a part of the Arkansas Water Plan.

(b) Whenever any water development project of any federal agency is included in the plan, the commission shall so advise the appropriate federal agency and shall obtain from that agency an estimate of the entire amounts of nonfederal costs involved in the project.

(c)(1) Whenever it shall make a determination, based upon such estimates and its own study that the local nonfederal costs of the project may be amortized over the life of the project, the commission may give the appropriate federal agency constructing the project reasonable assurance, in writing, that the demands for the use of the project will be made within a period of time which will permit the paying out of the costs within the life of the project.

(2) Nothing in subdivision (c)(1) of this section shall be construed as to commit the state government either to pay or guarantee the payment of such costs, and a statement to that effect shall be contained in any such writing.

(3) Subdivision (c)(2) of this section shall not be so construed as to inhibit the right of the commission to pay any such costs as related to anticipated future demand or need whenever it shall have been provided with funds for that purpose.

(d) Whenever funds are appropriated for that purpose and to the extent that they are available, the commission may use such funds for the following water development project costs:

(1) Planning and engineering costs;

(2) Costs of acquisition of necessary lands, rights-of-way, and easements;

(3) Costs of necessary relocation of roads, highways, bridges, railroads, pipelines, power transmission lines, and other such properties;

(4) Construction costs;

(5) Project operation, maintenance, and replacement costs; and

(6) Payment of interest on the unpaid balance of any of the itemized costs in this subsection.

History. Acts 1969, No. 217, § 3; 1973, No. 584, § 3; A.S.A. 1947, § 21-1319.

15-22-507. Arkansas Water Development Fund.

(a) The Arkansas Natural Resources Commission is authorized to establish, maintain, and administer the "Arkansas Water Development Fund", which shall be used for the payment of any water development project costs set out in § 15-22-506 and to discharge obligations pertaining to the principal of and interest on any water development bond issued by the commission.

(b) The fund may consist of the following:

(1) Cash funds, from whatever source received, on deposit by the commission in any one (1) or more banks qualifying for the deposit of public funds;

(2) Savings accounts in any one (1) or more banks qualifying for such deposits of public funds; and

(3) Bonds of the United States.

History. Acts 1969, No. 217, § 4; A.S.A. 1947, § 21-1320.

15-22-508 — 15-22-510. [Repealed.]

Publisher's Notes. These sections, concerning revenue bonds generally, eligibility to invest in bonds and default, were repealed by Acts 2003, No. 598, § 2. The sections were derived from the following sources:

15-22-508. Acts 1969, No. 217, §§ 8, 10; A.S.A. 1947, §§ 21-1323, 21-1325.

15-22-509. Acts 1969, No. 217, § 14; A.S.A. 1947, § 21-1329.

15-22-510. Acts 1969, No. 217, § 11; A.S.A. 1947, § 21-1326.

15-22-511. Exemption of commission property from mortgages and forced sales.

All property controlled and operated by the Arkansas Natural Resources Commission shall be exempt from forced sale. Nothing in this subchapter shall be construed to authorize the commission to mortgage or otherwise encumber any of the property, except that the revenues thereof may be pledged as provided in this subchapter.

History. Acts 1969, No. 217, § 12; A.S.A. 1947, § 21-1327.

15-22-512. Tax exemptions for commission property.

All of the property controlled and operated by the Arkansas Natural Resources Commission shall be exempt from taxation by the State of Arkansas or by any municipal corporation, county, or other political subdivision or taxing district of the state.

History. Acts 1969, No. 217, § 13; A.S.A. 1947, § 21-1328; Acts 2003, No. 598, § 3.

15-22-513. Use of appropriated funds.

(a) In addition to being available for use in the operation of the Arkansas Natural Resources Commission for current water development project costs and for such other and additional purposes as provided for by law, appropriated funds for the maintenance of the commission may be used in the discretion of the commission for meeting the debt service requirements of outstanding revenue bonds issued by the commission including the retirement thereof in advance of maturity by call or purchase on tender.

(b) However, no tax moneys appropriated for maintenance of the commission may be pledged, as distinguished from used, to meet the

debt service requirements of any revenue bonds issued by the commission.

History. Acts 1969, No. 217, § 15; A.S.A. 1947, § 21-1330; Acts 2003, No. 598, § 3.

15-22-514. Disposition of fees, earnings, etc.

All fees, earnings, and other collections of the Arkansas Natural Resources Commission shall be converted by the commission to the Arkansas Water Development Fund to be used by the commission as provided by law and shall not be paid into the State Treasury.

History. Acts 1969, No. 217, § 9; A.S.A. 1947, § 21-1324.

SUBCHAPTER 6 — ARKANSAS WATER RESOURCES DEVELOPMENT ACT OF 1981

SECTION.

- 15-22-601. Title.
- 15-22-602. Definitions.
- 15-22-603. Construction.
- 15-22-604. Powers of commission.
- 15-22-605. Water resources development bonds — Authority to issue.
- 15-22-606. Bonds — Principal amount.
- 15-22-607. Bonds — Approval of Governor.
- 15-22-608. Bonds — Purpose of issuance and application of proceeds.
- 15-22-609. Bonds — Form.
- 15-22-610. Bonds — Individual series.
- 15-22-611. Bonds — Authorizing resolution, trust indenture, and selection of projects.
- 15-22-612. Bonds — Execution and delivery.

SECTION.

- 15-22-613. Bonds — Sale after notice.
- 15-22-614. Deposit of revenues — Trust funds.
- 15-22-615. Bonds as general obligations of state — Pledge of revenues.
- 15-22-616. Payment of debt service — Transfer and use of funds.
- 15-22-617. Tax exemption — Legal investment.
- 15-22-618. Contract not to be impaired — Remedies of bondholder.
- 15-22-619. Creation of rights.
- 15-22-620. Deposit of proceeds of sale of bonds.
- 15-22-621. Investment of moneys.
- 15-22-622. Expediting cases.

A.C.R.C. Notes. The language declared unconstitutional by *Reeves v. Young*, 295 Ark. 506, 749 S.W.2d 327 (1988), was deleted by Acts 1991, No. 786.

Acts 1991, No. 551, §§ 1-7, provided: "SECTION 1. The General Assembly finds:

"(a) that the Arkansas Water Resources Development Act of 1981, Act 496, (codified, in part, as Arkansas Code of 1987 Annotated Sections 15-22-601 through 602) (the '1981 Act') authorized the Arkan-

sas Soil and Water Conservation Commission (the 'Commission') to issue on behalf of the State of Arkansas the State Water Resources Development General Obligation Bonds (the 'Bonds') in a total principal amount of not exceeding one hundred million dollars (\$100,000,000), as approved by the voters of the State of Arkansas at the general election held November 2, 1982;

"(b) that Section 2(b) of the 1981 Act (which is not codified in the Arkansas

Code of 1987) provides that the total principal amount of Bonds which may be issued during any fiscal biennium shall not exceed fifteen million dollars (\$15,000,000), unless the General Assembly shall, by law, have authorized a greater principal amount thereof to be issued during a fiscal biennium;

"(c) that pursuant to the 1981 Act, the Commission has heretofore issued fifteen million dollars (\$15,000,000) of Bonds designated Series 1985 during the 1986-1987 fiscal biennium and fifteen million dollars (\$15,000,000) of Bonds designated Series 1987 during the 1988-1989 fiscal biennium (which Series 1987 was refunded by the issuance on October 12, 1989, of refunding Bonds in the principal amount of fourteen million six hundred and seventy thousand dollars (\$14,670,000) designated Series 1989A), and, therefore, an aggregate of thirty million dollars (\$30,000,000) of Bonds had been issued at the end of 1988-1989 fiscal biennium. The Commission has not authorized the issuance of any Bonds within the meaning of Section 2(b) of the 1981 Act during the 1990-1991 fiscal biennium; and

"(d) that, because of international events, current market conditions for the further sale of the Bonds are unstable, and it will be in the best interests of the State to afford the Commission discretion in determining to market additional series of Bonds during the current and subsequent fiscal biennium.

"SECTION 2. Pursuant to the provisions of Section 2(b) of the 1981 Act, the Commission is authorized to issue Bonds under the 1981 Act in one (1) or more series not to exceed an aggregate of thirty million dollars (\$30,000,000) in principal amount during the period commencing on March 14, 1991 and ending June 30, 1993.

"SECTION 3. The applicability of this Act is limited solely to each of the fiscal bienniums set forth herein and shall not apply to any fiscal biennium commencing on and after July 1, 1993, as to which Section 2(b) of the 1981 Act shall apply unless otherwise provided by laws enacted by future General Assemblies.

"SECTION 4. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

"SECTION 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"SECTION 6. All laws and parts of laws in conflict with this Act are hereby repealed.

"SECTION 7. It has been found and determined by the General Assembly that there is an immediate need for the development of the State's water resources, in order that the inhabitants of the State shall have adequate sources of water supply for domestic, agricultural, industrial, and other essential purposes, and that the current international economic instability requires that discretion to act be accorded to the Commission during the current and subsequent fiscal biennium to issue bonds pursuant to the 1981 Act. For these reasons, it is declared necessary for the preservation of the public peace, health, and safety that this Act become effective without delay. It is, therefore, declared that an emergency exists, and this Act shall take effect from the date of its passage and approval."

Acts 1995 (1st Ex. Sess.), No. 5, §§ 1-3, provided: "SECTION 1. The General Assembly finds: (a) that the Arkansas Water Resources Development Act of 1981 (codified as Arkansas Code of 1987 Annotated Sections 15-22-601 through 622) (the '1981 Act') authorized the Arkansas Soil and Water Conservation Commission (the 'Commission') to issue on behalf of the State of Arkansas the State Water Resources Development General Obligation Bonds (the 'Bonds') in a total principal amount of not exceeding one hundred million dollars (\$100,000,000), as approved by the voters of the State of Arkansas at the general election held November 2, 1982;

"(b) that Arkansas Code 15-22-606 provides that the total principal amount of bonds which may be issued during any fiscal biennium shall not exceed fifteen million dollars (\$15,000,000), unless the General Assembly shall, by law, have authorized a greater principal amount thereof to be issued during a fiscal biennium;

"(c) that market rate declines make potential debt service savings available to the State through the issuance of refunding Bonds by the Commission;

"(d) that demands for proceeds of the Bonds to develop water projects is higher than projected;

"(e) that the fifteen million dollars (\$15,000,000) provided for in Arkansas Code 15-22-606 may not be sufficient to meet the refunding and new project needs.

"SECTION 2. Pursuant to the provisions of Arkansas Code 15-22-606, the Commission is authorized to issue Bonds under the 1981 Act in one (1) or more series not to exceed an aggregate of thirty million dollars (\$30,000,000) in principal amount during the fiscal biennium ending June 30, 1997.

"SECTION 3. The applicability of this Act is limited solely to the fiscal biennium ending June 30, 1997, and shall not apply to any fiscal biennium commencing on and after July 1, 1997, as to which Arkansas Code 15-22-606 shall apply unless otherwise provided by law."

Acts 1997, No. 227, § 2, provided: "(a) Pursuant to the provisions of Section 2(b) of the Arkansas Water Resources Development Act of 1981, the Soil and Water Conservation Commission is authorized to issue bonds, including refunding bonds, under the 1981 Act in one (1) or more series in the additional amount of twelve million twenty-five thousand dollars (\$12,025,000) (which together with the unissued balance of the authority granted pursuant to Act No. 5 of the First Extraordinary Session of the Eightieth General Assembly approved October 19, 1995, in the amount of two million nine hundred seventy-five thousand dollars (\$2,975,000) shall equal in the aggregate, authority of not to exceed fifteen million dollars (\$15,000,000)), in principal amount during the remainder of the fiscal biennium ending June 30, 1997.

"(b) Pursuant to the provisions of Section 2(b) of the Arkansas Water Resources Development Act of 1981, the Soil and Water Conservation Commission is authorized to issue bonds, including refunding bonds, under the 1981 Act in one (1) or more series not to exceed an aggregate of twenty-four million seven hundred thousand dollars (24,700,000) in principal amount during the fiscal biennium ending June 30, 1999."

Acts 1997, No. 227, § 3, provided: "The applicability of this Act is limited solely to (i) remainder of the fiscal biennium beginning on the effective date of this Act and ending June 30, 1997, and (ii) the fiscal biennium commencing on July 1, 1997, and ending June 30, 1999, and shall not apply to any fiscal biennium commencing on and after July 1, 1999, as to which Section 2(b) of the 1981 Act shall apply unless otherwise provided by law."

Publisher's Notes. Acts 1981, No. 496, §§ 2 and 17, established election procedures and provided that no bonds would be issued under the act without prior consent of a majority of qualified electors.

Acts 1985, No. 280, § 1, provided that the purposes of the 1985 amendment to this subchapter were to enable the Arkansas Soil and Water Conservation Commission to assist local communities and agencies in the development of water resources, and to further define certain terms and provisions of Acts 1981, No. 496.

Acts 1985, No. 280, § 6, provided that the 1985 amendment was to be liberally construed to effectuate these legislative intents and purposes, and that all powers granted by the 1985 amendment were to be broadly interpreted to effectuate these intents and purposes and not as a limitation of powers.

Effective Dates. Acts 1981, No. 496, § 22: Mar. 16, 1981. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that there is an immediate need for the development of the State's water resources, in order that the inhabitants of the State shall have adequate sources of water supply for domestic, agricultural, industrial, and other essential purposes. For these reasons, it is declared necessary for the preservation of the public peace, health, and safety that this Act become effective without delay. It is, therefore, declared that an emergency exists, and this Act shall take effect from the date of its passage and approval."

Acts 1985, No. 280, § 8: Mar. 7, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in immediate need of further developing its water resources; that further delays in the issuance of bonds by the Arkansas Soil and Water Conservation Commission as

previously approved by the people of Arkansas will operate to the detriment of the people in that immediate and pressing needs for the provision of adequate water resources and supplies for domestic, agricultural, industrial and other essential purposes will be further frustrated and delayed; and that the provisions of this Act are necessary to aid in the financing of

water resource projects by the Arkansas Soil and Water Conservation Commission. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Looney, Enhancing the Role of Water Districts in Groundwater Management and Surface Water Utilization in Arkansas, 48 Ark. L. Rev. 643.

U. Ark. Little Rock L.J. Survey — Miscellaneous, 12 U. Ark. Little Rock L.J. 219.

CASE NOTES

Constitutionality.

Acts 1985, No. 280, amending certain sections in this subchapter, relating to water resource development, is unconstitutional as it violates Ark. Const., Amend.

20, relating to state bonds. *Reeves v. Young*, 295 Ark. 506, 749 S.W.2d 327 (1988) (decision prior to 1991 amendment).

15-22-601. Title.

This subchapter may be referred to and cited as the "Arkansas Water Resources Development Act of 1981".

History. Acts 1981, No. 496, § 1; A.S.A. 1947, § 21-2301.

RESEARCH REFERENCES

Ark. L. Rev. Looney, An Update on Arkansas Water Law: Is the Riparian

Rights Doctrine Dead?, 43 Ark. L. Rev. 573.

15-22-602. Definitions.

As used in this subchapter:

- (1) "Commission" means the Arkansas Natural Resources Commission;
- (2) "Debt service" means principal, interest, redemption premiums, if any, and trustees' and paying agents' and like servicing fees;
- (3) "Develop" means to construct, acquire by purchase or, as set forth in this subchapter, by eminent domain, install, or equip any lands, buildings, improvements, machinery, equipment, or other properties of whatever nature, real, personal, or mixed;
- (4) "Person" means any individual, partnership, or corporation or any county, municipality, school district of the State of Arkansas, or agency thereof or any agency of the State of Arkansas;

(5) "Project" or "water resources project" means any lands, buildings, improvements, machinery, equipment, or other property, real, personal, or mixed or any combination thereof developed in pursuance of all or any of the purposes of this subchapter, including, without limitation, any reservoir;

(6) "Project costs" means all or any part of the costs of developing any project under this subchapter, costs incidental or appropriate thereto and costs incidental or appropriate to the financing thereof, including, without limitation, capitalized interest, appropriate reserves and fees and costs for engineering, legal, and other administrative and consultant services;

(7) "Reservoir" means any impoundment of water accomplished as a project under this subchapter; and

(8) "Water" means water created by precipitation or other forces of nature, including, without limitation, surface, spring, or other subsurface water which percolates to the surface of the earth, whether carried in a watercourse, carried in a man-made channel, or carried on the surface of the earth and not in any watercourse or channel or held in any reservoir, or other impoundment or standing body of water.

History. Acts 1981, No. 496, § 3; 1985, No. 280, § 2; A.S.A. 1947, § 21-2303; Acts 1991, No. 786, § 18.

Publisher's Notes. Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 78th General Assembly. All

such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

15-22-603. Construction.

(a) This subchapter shall be liberally construed to accomplish the purposes set forth. This subchapter shall constitute the sole authority necessary to accomplish the purposes of this subchapter, and to this end it shall not be necessary that the provisions of other laws pertaining to the development of public facilities and properties and the financing thereof be complied with.

(b) This subchapter shall be interpreted to supplement existing laws conferring rights and powers upon the Arkansas Natural Resources Commission, and the rights and powers set forth in this subchapter shall be regarded as alternative methods for the accomplishment of the purposes of this subchapter.

History. Acts 1981, No. 496, § 21; A.S.A. 1947, § 21-2321.

15-22-604. Powers of commission.

In addition to powers conferred under other laws, the Arkansas Natural Resources Commission shall have the power under this subchapter:

- (1) To develop water resources projects;
- (2) To acquire absolute title to and use for any purpose and at any place water stored in any reservoir or other impoundment;
- (3) To acquire, collect, impound, store, transport, distribute, sell, furnish, and dispose of water to any person at any place;
- (4) To construct, lease as lessee, and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, and mortgage all or any part of any project;
- (5) To purify, treat, and process water;
- (6) To assist persons in the preparation of their premises for the use of water furnished by the commission and to construct upon such premises project properties of any kind and character and, in connection therewith, to receive, acquire, endorse, pledge, hypothecate, and dispose of notes, bonds, and other evidences of indebtedness;
- (7) To acquire, own, hold, use, exercise, sell, mortgage, pledge, hypothecate, and in any manner to dispose of franchises, rights, privileges, licenses, rights-of-way, and easements necessary, useful, or appropriate;
- (8) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of any project or other properties, tangible or intangible, including, without limitation, franchises, rights, privileges, licenses, rights-of-way, and easements;
- (9) To use the bed of any watercourse without adversely affecting existing riparian rights, any highway, or any right-of-way, easement, or other similar property rights or any tax-forfeited land owned or held by the State of Arkansas or by any political subdivision thereof;
- (10) To have and exercise the right of eminent domain for the purpose of acquiring lands, whether by the fee title thereto or any easement, right-of-way, or other interest or estate therein, for reservoirs and other projects or portions thereof utilizing the procedure now provided for condemnation by railroads by §§ 18-15-1201 — 18-15-1207;
- (11) To accept gifts or grants of moneys, services, franchises, rights, privileges, licenses, rights-of-way, easements, or other property, real, personal, or mixed;
- (12) To make any and all contracts necessary or convenient for the exercise of the powers or implementation of the purposes set forth in this subchapter;
- (13) To fix, regulate, and collect rates, fees, rents, or other charges for water or for the use of any properties or services furnished by the commission; and
- (14) To take such other action as may be appropriate to accomplish the purposes of this subchapter.

History. Acts 1981, No. 496, § 13; 1985, No. 280, § 4; A.S.A. 1947, § 21-2313; Acts 1991, No. 786, § 18.

Publisher's Notes. As to the effect of

Acts 1991, No. 786 on the acts passed at the regular session of the 78th General Assembly, see Publisher's Note to § 15-22-602.

15-22-605. Water resources development bonds — Authority to issue.

The Arkansas Natural Resources Commission is authorized to issue bonds of the State of Arkansas, to be known as "State Water Resources Development General Obligation Bonds". For the purposes set forth in this subchapter, the total principal amount of the bonds shall not exceed one hundred million dollars (\$100,000,000).

History. Acts 1981, No. 496, § 2; A.S.A. 1947, § 21-2302.

15-22-606. Bonds — Principal amount.

The total principal amount of bonds to be issued during any fiscal biennium shall not exceed fifteen million dollars (\$15,000,000), unless the General Assembly by law shall have authorized a greater principal amount of bonds to be issued during a fiscal biennium.

History. Acts 1981, No. 496, § 2; A.S.A. 1947, § 21-2302.

15-22-607. Bonds — Approval of Governor.

(a) Before any bonds may be issued during any fiscal biennium, the Arkansas Natural Resources Commission shall submit to the Governor a written plan for the work or projects to be performed with the proceeds derived from the sale of the bonds, the need for, and the estimated benefits thereof.

(b) Upon receipt of the plan, the Governor shall confer with the Chief Fiscal Officer of the State concerning whether the annual amount of general revenue funds required to be set aside from the general revenues, as such a term is defined in the Revenue Stabilization Law, § 19-5-101 et seq., for payment of debt service requirements in connection with the bonds during either year of the fiscal biennium in which the bonds are to be issued, would require moneys from the general revenues for allocation that would work undue hardship upon any agency or program supported from general revenues under the provisions of the Revenue Stabilization Law, § 19-5-101 et seq.

(c) Upon conclusion of the studies and after obtaining the advice of the Legislative Council thereon, the Governor, if he or she deems the plan to be in the public interest, by proclamation, shall authorize the commission to proceed with the issuance of the bonds as provided in this subchapter.

(d)(1) If the Governor shall decline or refuse to give his or her approval for the issuance of the bonds and shall decline to issue a proclamation approving the issuance thereof, the Governor shall promptly notify the commission, in writing, and the commission shall not issue the bonds.

(2) However, the commission may resubmit a request to the Governor for the issuance of the bonds within one (1) year from the date of notice of the Governor's refusal to grant approval for the issuance.

(e) The issue as resubmitted to the Governor shall be dealt with in the same manner as provided for the initial request for authority to issue the bonds.

History. Acts 1981, No. 496, § 2; A.S.A. 1947, § 21-2302.

Cross References. Revenue Stabilization Law, § 19-5-101 et seq.

15-22-608. Bonds — Purpose of issuance and application of proceeds.

Bonds issued under this subchapter shall be issued for the purpose of financing the development of water resources projects, and the proceeds of any bonds issued under this subchapter shall be applied for the payment of project costs.

History. Acts 1981, No. 496, § 5; A.S.A. 1947, § 21-2305.

15-22-609. Bonds — Form.

Bonds may be issued in the form of coupon bonds, payable to bearer, or as bonds registered as to principal only with interest coupons, or as bonds registered as to both principal and interest without coupons; may be in such denominations; may be made exchangeable for bonds of another form or denomination, bearing the same rate of interest and date of maturity; principal and interest may be made payable at such places within or without the state; may be made subject to redemption prior to maturity in such manner and for such redemption prices; and may contain such other terms and conditions, all as the Arkansas Natural Resources Commission shall determine.

History. Acts 1981, No. 496, § 4; A.S.A. 1947, § 21-2304.

15-22-610. Bonds — Individual series.

(a) The bonds shall be issued in series as set forth in this subchapter in amounts sufficient to finance all or any part of project costs with the respective series to be designated in alphabetical order or by the year in which issued.

(b) The bonds of each series shall:

(1)(A) Have such date as the Arkansas Natural Resources Commission shall determine and shall mature annually over a period ending not later than thirty (30) years after the date of the bonds of each series with the maturities to be so fixed that the aggregate principal and interest payments shall be approximately equal, insofar as practicable, each year throughout the maturity schedule, as determined by the commission.

(B) Pending the issuance of bonds hereunder, the commission may issue temporary notes to be exchanged for or paid from the proceeds of bonds at such time as bonds may be issued;

(2)(A) Bear interest at the rate or rates accepted by the commission at the public sale of the bonds.

(B) Interest shall be payable at such times as the commission shall determine, but no bond issued under this subchapter shall bear interest at a rate in excess of ten percent (10%) per annum; and

(3) Have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to the provisions regarding registration of ownership set forth in § 15-22-609.

History. Acts 1981, No. 496, § 4; 1985, No. 280, § 3; A.S.A. 1947, § 21-2304; Acts 1991, No. 786, § 18.

Publisher's Notes. Concerning the ef-

fect of Acts 1991, No. 786, on the acts passed at the regular session of the 78th General Assembly see the Publisher's Notes under § 15-22-602.

15-22-611. Bonds — Authorizing resolution, trust indenture, and selection of projects.

(a)(1) All bonds issued under this subchapter shall be authorized by resolution of the Arkansas Natural Resources Commission.

(2) Each resolution shall contain terms, covenants, and conditions as deemed desirable, including, without limitation, those pertaining to:

(A) The establishment and maintenance of funds and accounts;

(B) The deposit and investment of revenues and of bond proceeds; and

(C) The rights and obligations of the state, its officers and officials, the commission, and the holders and the registered owners of the bonds.

(3) All bonds issued under this subchapter shall be on a parity as to security.

(4)(A) The resolution of the commission may provide for the execution and delivery by the commission of a trust indenture or trust indentures with a bank or banks located within or without the state, containing any of the terms, covenants, and conditions referred to in subdivision (a)(2) of this section.

(B) The trust indenture or trust indentures shall be binding upon the state and its officers and officials to the extent set forth in this subchapter.

(b) Any resolution or trust indenture adopted or executed under this section shall provide that power is reserved:

(1) To apply to the payment of debt service on the bonds issued or secured thereunder all or any part of the revenues derived from any project financed by such bonds; and

(2) To the extent of the revenues referred to in subdivision (b)(1) of this section, to release from any requirement of the resolution or trust indenture other revenues and resources of the state, including, without limitation, the general revenues for allocation required to be transferred under § 15-22-616.

(c) The commission shall endeavor to select projects for financing and development under this subchapter which offer reasonable and realistic prospects of the production of revenues, whether by sales of water to municipalities or other public bodies, sales of water to industry, or otherwise.

History. Acts 1981, No. 496, § 6; A.S.A. 1947, § 21-2306.

15-22-612. Bonds — Execution and delivery.

(a) Each bond shall be signed with the facsimile signatures of the Governor, the Secretary of State, and the Chair of the Arkansas Natural Resources Commission and by the manual signature of the Treasurer of State or by a deputy of the Treasurer of State and shall have affixed or imprinted thereon the Great Seal of the State.

(b) Interest coupons attached to the bonds shall be signed with the facsimile signature of the Treasurer of State.

(c) Delivery of the bonds and coupons so executed shall be valid, notwithstanding any change in persons holding those offices occurring after the bonds have been executed.

History. Acts 1981, No. 496, § 7; A.S.A. 1947, § 21-2307.

15-22-613. Bonds — Sale after notice.

(a) Bonds at any time sold under the provisions of this subchapter shall be on the basis of public sale on sealed bids, after notice published by the Chair of the Arkansas Natural Resources Commission for at least one (1) insertion not less than twenty (20) days before the date of sale in a newspaper published in the City of Little Rock and in a financial newspaper or journal published in the Borough of Manhattan, City and State of New York.

(b) The Arkansas Natural Resources Commission shall award the sale, if any, to the bidder offering to purchase the bonds at a price which results in the lowest net interest cost to the State of Arkansas as determined by computing the total interest cost from date to maturity and deducting therefrom any premium bid and adding thereto the amount of any discount bid.

(c) The commission shall reserve the right to reject all bids.

(d) The notice shall contain any other terms and provisions as the commission determines to be desirable.

(e) If the commission determines that such action is desirable, the commission may employ fiscal agents and legal counsel and may pay them reasonable compensation out of the proceeds of the bonds.

History. Acts 1981, No. 496, § 8; A.S.A. 1947, § 21-2308.

15-22-614. Deposit of revenues — Trust funds.

(a) All revenues derived by the Arkansas Natural Resources Commission from any project financed under this subchapter shall be deposited by the commission, as received, into trust funds in the State Treasury to accomplish the purposes of this subchapter, specifically, in amounts or portions as set forth in the resolution or trust indenture authorizing or securing the bonds issued to finance the development of such a project into trust funds created and designated as follows:

(1) Into the Water Resources Development Bond Fund to provide for payment of all or a part of debt service on bonds issued under this subchapter;

(2) Into the Water Resources Development Debt Service Reserve Fund to provide a reserve for payment of debt service on the bonds; and

(3) Into the Water Resources Development Operation and Maintenance Fund to provide for all or a part of the operation and maintenance needs of such a project or of other projects financed under this subchapter.

(b) The Treasurer of State is authorized and directed to establish separate accounts within the funds to correspond to and reflect the various series of bonds to which attributable.

History. Acts 1981, No. 496, § 9; A.S.A. 1947, § 21-2309.

15-22-615. Bonds as general obligations of state — Pledge of revenues.

(a) All bonds issued under this subchapter shall be direct general obligations of the State of Arkansas for the payment of the debt service on which the full faith and credit of the State of Arkansas are hereby irrevocably pledged so long as the bonds are outstanding.

(b) The bonds shall be payable from the general revenues of the state as that term is defined in the Revenue Stabilization Law of Arkansas, § 19-5-101 et seq., and the amount of general revenues as is necessary is pledged to the payment of debt service on the bonds, and shall be and remain pledged for those purposes.

History. Acts 1981, No. 496, § 10; A.S.A. 1947, § 21-2310.

15-22-616. Payment of debt service — Transfer and use of funds.

(a)(1) On or before the commencement of each fiscal year, the Chief Fiscal Officer of the State shall:

(A) Determine the estimated amount required for payment of all or a part of debt service on the bonds issued under this subchapter during that fiscal year, after making deductions therefrom of estimated moneys to be available to the Arkansas Natural Resources Commission from other sources therefor; and

(B) Certify to the Treasurer of State the estimated amount referred to in subdivision (a)(1)(A) of this section.

(2) The Treasurer of State shall make monthly transfers from the State Apportionment Fund to the Water Resources Development Bond Fund to provide for payment of all or part of the debt service on the bonds issued under this subchapter, of that amount of general revenues for allocation, as such a term is defined in the Revenue Stabilization Law, § 19-5-101 et seq., as shall be required to pay the maturing debt service on bonds issued under this subchapter.

(b)(1) The Treasurer of State shall make any additional monthly transfer or transfers of general revenues for allocation as the Chief Fiscal Officer of the State shall certify to him or her as being required to enable the commission to establish and thereafter maintain a Water Resources Development Debt Service Reserve Fund to provide reserves for payment of debt service on the bonds.

(2) The obligation to make monthly transfers of general revenues for allocation from the State Apportionment Fund to the Water Resources Development Bond Fund and to the Water Resources Development Debt Service Reserve Fund shall constitute a first charge against the general revenues for allocation prior to all other uses to which the general revenues for allocation are devoted, either under present law or under any laws that may be enacted in the future.

(c) Moneys credited to the Water Resources Development Bond Fund and the Water Resources Development Debt Service Reserve Fund shall be used only for the purpose of paying debt service on the bonds, either at maturity or upon redemption prior to maturity, and for these purposes the Treasurer of State is designated the disbursing officer to administer the funds in accordance with the provisions of this subchapter.

(d) The Water Resources Development Debt Service Reserve Fund shall be held and used to ensure prompt payment of debt service on the bonds in the manner and pursuant to the conditions specified by the commission in the resolution or trust indenture authorizing or securing the bonds.

(e) Moneys in the Water Resources Development Bond Fund and the Water Resources Development Debt Service Reserve Fund over and above the amount necessary to ensure the prompt payment of debt service on the bonds and the establishment and maintenance of a reserve fund, if any, may be used for the redemption of bonds prior to maturity in the manner and in accordance with the provisions pertaining to redemption prior to maturity, as set forth in the resolution or trust indenture authorizing or securing the bonds.

History. Acts 1981, No. 496, § 11;
A.S.A. 1947, § 21-2311.

15-22-617. Tax exemption — Legal investment.

(a) All bonds issued under this subchapter and interest thereon shall be exempt from all taxes of the State of Arkansas, including income, inheritance, and property taxes.

(b) The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of municipal, county, bank, fiduciary, insurance company, and trust funds.

History. Acts 1981, No. 496, § 12;
A.S.A. 1947, § 21-2312.

15-22-618. Contract not to be impaired — Remedies of bondholder.

(a)(1) This subchapter shall constitute a contract between the State of Arkansas and the holders and registered owners of all bonds issued under this subchapter which shall never be impaired.

(2) Any violation of its terms, whether under purported legislative authority or otherwise, shall be enjoined by the courts at the suit of any bondholder or of any taxpayer.

(b) The courts, in like suit against the Arkansas Natural Resources Commission, the Treasurer of State, or other appropriate officer or official of the state, shall prevent a diversion of any revenues pledged under this subchapter and shall compel the restoration of diverted revenues, by injunction or mandamus.

(c) Also and without limitation as to any other appropriate remedy at law or in equity, any bondholder, by an appropriate action, including, without limitation, injunction or mandamus, may compel the performance of all covenants and obligations of the state and its officers and officials under this subchapter.

History. Acts 1981, No. 496, § 14;
A.S.A. 1947, § 21-2314.

15-22-619. Creation of rights.

This subchapter shall not create any right of any character, and no right of any character shall arise pursuant to it unless and until the first series of bonds authorized by this subchapter shall have been sold and delivered.

History. Acts 1981, No. 496, § 15;
A.S.A. 1947, § 21-2315.

15-22-620. Deposit of proceeds of sale of bonds.

The proceeds of the sale of bonds issued under this subchapter shall be deposited by the Arkansas Natural Resources Commission:

(1) Into all or any one (1) or more of the funds established pursuant to § 15-22-614, as set forth in the resolution or trust indenture authorizing or securing such bonds; and

(2)(A) Into the Water Resources Development Construction Fund, to be applied pursuant to appropriation by the General Assembly to the development of a project or projects developed under this subchapter.

(B) The Treasurer of State is authorized to establish various accounts within the fund to correspond to and reflect the series of bonds to which attributable.

History. Acts 1981, No. 496, § 18;
A.S.A. 1947, § 21-2318.

15-22-621. Investment of moneys.

Any moneys held in any fund created under this subchapter shall be invested by the State Board of Finance to the fullest extent practicable pending disbursement for the purposes intended. Investment shall be in accordance with the terms of the resolution or trust indenture authorizing or securing the series of bonds to which the fund appertains to the extent of the terms of the resolution or trust indenture.

History. Acts 1981, No. 496, § 19;
A.S.A. 1947, § 21-2319.

15-22-622. Expediting cases.

All cases involving the validity of this subchapter or any portion thereof or in any way arising under this subchapter or involving the bonds issued under this subchapter shall be deemed of public interest and shall be advanced by all courts and heard as a preferred cause. All appeals from judgments or decrees rendered in these cases must be taken within thirty (30) days after the rendition of the judgment or decree.

History. Acts 1981, No. 496, § 20;
A.S.A. 1947, § 21-2320.

SUBCHAPTER 7 — ARKANSAS WASTE DISPOSAL AND POLLUTION ABATEMENT FACILITIES FINANCING ACT OF 1987

SECTION.

- 15-22-701. Title.
- 15-22-702. Definitions.
- 15-22-703. Construction.
- 15-22-704. Powers of commission.
- 15-22-705. Waste disposal and pollution abatement facilities bonds — Authority to issue.
- 15-22-706. Bonds — Principal amount.
- 15-22-707. Bonds — Approval of Governor.
- 15-22-708. Bonds — Purpose of issuance and application of proceeds.
- 15-22-709. Bonds — Form.

SECTION.

- 15-22-710. Bonds — Individual series.
- 15-22-711. Bonds — Authorizing resolution, trust indenture, and selection of projects.
- 15-22-712. Bonds — Execution and delivery.
- 15-22-713. Bonds — Sale after notice.
- 15-22-714. Bonds as general obligations of state — Pledge of revenues.
- 15-22-715. Payment of debt service — Transfer and use of funds.
- 15-22-716. Tax exemption — Legal investment.

SECTION.

- 15-22-717. Contract not to be impaired — Remedies of bondholder.
 15-22-718. Creation of rights.
 15-22-719. Deposit of proceeds of sale of bonds.

SECTION.

- 15-22-720. Investment of moneys.
 15-22-721. Expediting cases.

A.C.R.C. Notes. Acts 1987, No. 686, §§ 16, 17, and 19, provided:

“SECTION 16. No Bonds shall be issued under this act except by and with the consent of a majority of the qualified electors of the state voting on the question at the general election of 1988 unless the Governor shall, by proclamation, call a special election to be conducted prior thereto. If the question is presented at the general election of 1988, notice thereof shall be published by the Secretary of State in a newspaper of general circulation in the state at least sixty (60) days prior to the general election, and notice thereof shall be mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to the general election.

“If a special election is called by the Governor, the proclamation thereof shall be made at least sixty (60) days prior to the date fixed by such proclamation for the election, and notice of the special election shall be given by publication of the proclamation for one insertion in one newspaper of general circulation published in each county in the state not less than thirty (30) days prior to the date of such election. If there is no newspaper regularly published in a county, the proclamation may be published in any newspaper having a general circulation in the county. It shall not be necessary, in the case of the notice or proclamation for the election, to publish this act in its entirety, but the notice or proclamation shall state that it is issued for the purpose of submitting to the people substantially the following question:

“Shall the Arkansas Soil and Water Conservation Commission be authorized to issue State Waste Disposal and Pollution Abatement Facilities General Obligation Bonds under the authority of the Arkansas Waste Disposal and Pollution Abatement Facilities Financing Act of 1987 in total principal amount not to

exceed two hundred fifty million dollars (\$250,000,000), in series from time to time in principal amounts not to exceed, without prior approval of the General Assembly, fifty million dollars (\$50,000,000) in any fiscal biennium, which bonds shall be secured by a pledge of the full faith and credit of the State of Arkansas?

“Whether the question is presented at special election or at the general election of 1988, the title of this act shall be the ballot title, and there shall be printed on the ballot the proposition as stated above, and the following:

“FOR Issuance of Arkansas Waste Disposal and Pollution Abatement Facilities General Obligation Bonds ☐

AGAINST Issuance of Arkansas Waste Disposal and Pollution Abatement Facilities General Obligation Bonds ☐

“The county boards of election commissioners of the several counties of this state shall hold and conduct the election, and each such board is hereby authorized and directed to take such action with respect to the appointment of election officials and such other matters as the law requires; and the vote shall be canvassed and the result thereof declared in each county by such several county boards. The results shall within ten (10) days after the date of the election be certified by such county boards to the Secretary of State who shall forthwith tabulate all returns so received by him and certify to the Governor the total vote for and against the proposition submitted as in this section provided.

“The result of the election shall be proclaimed by the Governor by publication one time in a newspaper published in the City of Little Rock, Arkansas, and the results as proclaimed shall be conclusive unless attacked in the courts within thirty (30) days after the date of such publication.

“SECTION 17. If a majority of the qualified electors voting on the question shall vote for the issuance of the bonds,

the commission shall proceed with the sale and the issuance of the bonds as provided in this act. If a majority of the qualified electors voting on the question vote against the issuance of the bonds, none of the bonds authorized by this act shall ever be sold or issued, and all provisions of this act shall be of no further effect.

“SECTION 19. If, for any reason any section or provision of this act shall be held to be unconstitutional or invalid for any reason, such holding shall not affect the remainder of this Act, but this Act, insofar as it is not in conflict with the Constitution of this State or the Constitution of the United States, shall be permitted to stand, and the various provisions of this act are hereby declared to be severable for that purpose.”

The bond issue was approved by the

voters at the November, 1988 general election.

Effective Dates. Acts 1987, No. 686, § 21: Apr. 7, 1987. Emergency clause provided: “It has been found and it is hereby declared by the General Assembly that there is an immediate need for the development of waste disposal facilities to provide for the safe, sanitary disposal of both liquid and solid wastes produced by municipalities, individuals, industries, or agriculture and for the development of pollution abatement facilities to reduce pollution of the State’s water resources. For these reasons, it is declared necessary for the preservation of the public peace, health, and safety that this Act become effective without delay. It is, therefore, declared that an emergency exists, and this Act shall take effect from the date of its passage and approval.”

15-22-701. Title.

This subchapter may be referred to and cited as the “Arkansas Waste Disposal and Pollution Abatement Facilities Financing Act of 1987”.

History. Acts 1987, No. 686, § 1.

15-22-702. Definitions.

As used in this subchapter:

(1) “Commission” means the Arkansas Natural Resources Commission and any successor agency or department;

(2) “Debt service” means principal, interest, redemption premiums, if any, and trustees’ and paying agents’ and like servicing fees relative to the bonds;

(3) “Develop” means to construct, acquire by purchase or, as set forth in § 15-22-704(5), by eminent domain, own, operate, lease as lessor or lessee, lend, make grants in respect of, or install or equip any lands, buildings, improvements, machinery, equipment, or other properties of whatever nature, real, personal, or mixed;

(4) “Person” means any individual partnership or corporation, or any county, municipality, conservation district, or school district in the State of Arkansas or agency thereof or any agency of the State of Arkansas;

(5) “Pollution abatement” means reduction, control, or elimination by appropriate methods of contamination or other alteration of the physical, chemical, or biological properties of any waters of the state or such discharge of any liquid, gaseous, or solid substance in any waters of the state as will or is likely to create a nuisance or render the waters

harmful or detrimental or injurious to public health, safety, or welfare or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses or to livestock, wild animals, birds, or fish or other aquatic life;

(6) "Project" means any lands, buildings, improvements, conservation practices, machinery, equipment, or other property, real, personal, or mixed, or any combination thereof developed in pursuance of all or any of the purposes of this subchapter;

(7) "Project costs" means all or any part of the costs of developing any project under this subchapter, costs incidental or appropriate thereto, and costs incidental or appropriate to the financing thereof, including, without limitation, capitalized interest and appropriate reserves and fees and costs for engineering, legal, and other administrative and consultant services; and

(8) "Waste" means any liquid or solid produced as an undesirable by-product of any activity.

History. Acts 1987, No. 686, § 3.

15-22-703. Construction.

(a) This subchapter shall be liberally construed to accomplish the purposes of this subchapter. This subchapter shall constitute the sole authority necessary to accomplish the purposes of this subchapter, and to this end, it shall not be necessary that the provisions of other laws pertaining to the development of public facilities and properties and the financing thereof be complied with.

(b) This subchapter shall be interpreted to supplement existing laws conferring rights and powers upon the Arkansas Natural Resources Commission, and the rights and powers set forth in this subchapter shall be regarded as alternative methods for the accomplishment of the purposes of this subchapter.

History. Acts 1987, No. 686, § 20.

15-22-704. Powers of commission.

In addition to powers conferred under other laws, the Arkansas Natural Resources Commission shall have the power under this subchapter to:

(1) Provide loans from bond proceeds to cities, counties, improvement districts, conservation districts, or other political subdivisions or agencies and instrumentalities of the state for payment of project costs;

(2) Construct or cause to be constructed with proceeds of loans or grants by the commission, lease as lessee, and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, mortgage, or lend with respect to all or any part of any project;

(3) Acquire, own, hold, use, exercise, sell, mortgage, pledge, hypothecate, and in any manner to dispose of franchises, rights, privileges, licenses, rights-of-way, and easements necessary, useful, or appropriate

for the exercise of the powers or implementation of the purposes set forth in this subchapter;

(4) Sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of any project or other properties, tangible or intangible, including, without limitation, franchises, rights, privileges, licenses, rights-of-way, and easements;

(5) Have and exercise the right of eminent domain for the purpose of acquiring lands, the fee title thereto, or any easement, right-of-way, or other interest or estate therein for projects or portions thereof by the procedure now provided for condemnation by railroads by § 18-15-1201 et seq.;

(6) Make or accept gifts or grants of moneys, services, franchises, rights, privileges, licenses, rights-of-way, easements, or other property, real, personal, or mixed;

(7) Make any and all contracts necessary or convenient for the exercise of the powers or implementation of the purposes set forth in this subchapter;

(8) Fix, regulate, and collect rates, fees, rents, or other charges for the use of any properties or services furnished by the commission;

(9) Require audits of any or all accounts related to construction, operation, or maintenance of any project funded by this subchapter;

(10) Take reasonable actions necessary to ensure that debt service requirements are met; and

(11) Take such other action as may be appropriate to accomplish the purposes of this subchapter.

History. Acts 1987, No. 686, § 13.

15-22-705. Waste disposal and pollution abatement facilities bonds — Authority to issue.

The Arkansas Natural Resources Commission is authorized to issue bonds of the State of Arkansas, to be known as "State of Arkansas Waste Disposal and Pollution Abatement Facilities General Obligation Bonds", in total principal amount not to exceed two hundred fifty million dollars (\$250,000,000), for the purposes set forth in this subchapter. The bonds may be issued in one (1) or more series as required subject to the conditions and in compliance with the procedures set forth in this subchapter.

History. Acts 1987, No. 686, § 2.

15-22-706. Bonds — Principal amount.

The total principal amount of bonds to be issued during any fiscal biennium shall not exceed fifty million dollars (\$50,000,000), unless the General Assembly, by law, shall have authorized a greater principal amount to be issued during a fiscal biennium.

History. Acts 1987, No. 686, § 2.

15-22-707. Bonds — Approval of Governor.

(a) Before any bonds may be issued during any fiscal biennium, the Arkansas Natural Resources Commission shall submit to the Governor a written plan for the work or projects to be financed with the proceeds derived from the sale of the bonds, the need for the work or projects, and the estimated benefits of the projects.

(b) Upon receipt of the written plan, the Governor shall confer with the Chief Fiscal Officer of the State concerning whether the annual amount of general revenue funds required to be set aside from the general revenues, as that term is defined in the Revenue Stabilization Law, § 19-5-101 et seq., for payment of debt service requirements in connection with the bonds during either year of the fiscal biennium in which the bonds are to be issued would require moneys from the general revenues for allocation that would work undue hardship upon any agency or program supported from general revenues under the provisions of the Revenue Stabilization Law, § 19-5-101 et seq.

(c) Upon conclusion of the studies and after obtaining the advice of the Legislative Council, the Governor, if he or she deems it to be in the public interest, shall by proclamation authorize the commission to proceed with the issuance of the bonds as provided in this subchapter.

(d) If the Governor shall decline or refuse to give his or her approval for the issuance of the bonds and shall decline to issue a proclamation approving the issuance of the bonds, the Governor shall promptly notify the commission, in writing, and the commission shall not issue the bonds, but it may thereafter, but not sooner than one (1) year from the date of the earlier submission, resubmit a request to the Governor for the issuance of the bonds.

(e) The issue as resubmitted to the Governor shall be dealt with in the same manner as provided for the initial request for authority to issue the bonds.

History. Acts 1987, No. 686, § 2.

15-22-708. Bonds — Purpose of issuance and application of proceeds.

Bonds issued under this subchapter shall be issued for the purpose of financing and development of waste disposal facilities or pollution abatement facilities, and the proceeds of the bonds shall be applied for the payment of project costs and the costs and expenses of issuance of the bonds.

History. Acts 1987, No. 686, § 5.

15-22-709. Bonds — Form.

The bonds may be issued in the form of coupon bonds, payable to bearer, or as bonds registered as to principal only with interest coupons, or as bonds registered as to both principal and interest without

coupons; may be in such denominations; and may be made exchangeable for bonds of another form or denomination, bearing the same rate of interest; may be made payable at such places within or without the state; may be made subject to redemption prior to maturity in such manner and for such redemption prices; and may contain such other terms and conditions, all as the Arkansas Natural Resources Commission shall determine.

History. Acts 1987, No. 686, § 4.

15-22-710. Bonds — Individual series.

(a) The bonds shall be issued in series as set forth in this section, in amounts sufficient to finance all or any part of project costs with the respective series to be designated in alphabetical order or by the year in which issued.

(b) The bonds of each series shall:

(1)(A) Have such date as the Arkansas Natural Resources Commission shall determine and shall mature annually, or be subject to mandatory sinking fund redemption, over a period ending not later than thirty (30) years after the date of the bonds of each series so as to provide annual debt service of approximately equal amounts insofar as practicable throughout the term of the bonds, as determined by the commission.

(B) Pending the issuance of bonds under this subchapter, the commission may issue temporary notes, maturing not more than five (5) years from the date of issuance, to be exchanged for or paid from the proceeds of bonds at such time as the bonds may be issued;

(2)(A) Bear interest at the rate or rates accepted by the commission at the public sale of the bonds.

(B) Interest shall be payable at such times as the commission shall determine; and

(3) Have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to the provisions regarding registration of ownership set forth in § 15-22-709.

History. Acts 1987, No. 686, § 4.

15-22-711. Bonds — Authorizing resolution, trust indenture, and selection of projects.

(a)(1) The bonds shall be authorized by resolution of the Arkansas Natural Resources Commission.

(2) Each resolution shall contain such terms, covenants, and conditions as are deemed desirable, including, without limitation, those pertaining to the establishment and maintenance of funds and accounts, to the deposit and investment of revenues and of bond proceeds, and to the rights and obligations of the state, its officers and officials, the commission, and the holders or registered owners of the bonds.

(3) The resolution of the commission may provide for the execution and delivery by the commission of a trust indenture or trust indentures with a bank or banks located within or without the state, containing any of the terms, covenants, and conditions referred to in this subsection. The trust indenture or trust indentures shall be binding upon the state and its officers and officials to the extent set forth in this subchapter.

(b) Any resolution or trust indenture adopted or executed under this section shall provide that power is reserved:

(1) To apply to the payment of debt service on the bonds issued or secured thereunder all or any part of the revenues derived from any project financed by the bonds; and

(2) To the extent of the revenues, to release from any requirement of the resolution or trust indenture other revenues and resources of the state, including, without limitation, the general revenues for allocation required to be transferred under § 15-22-715.

(c) The commission shall endeavor to select projects for financing and development under this subchapter which offer reasonable and realistic prospects of the production of revenues, whether by direct user fees, taxes, or otherwise.

History. Acts 1987, No. 686, § 6.

15-22-712. Bonds — Execution and delivery.

(a)(1) Each bond shall be signed with the facsimile signatures of the Governor, the Secretary of State, and the Chair of the Arkansas Natural Resources Commission and with the manual signature of the Treasurer of State or by one (1) or more deputies of the Treasurer of State.

(2) Each bond shall have affixed or imprinted thereon the Great Seal of the State of Arkansas.

(b) Interest coupons attached to the bonds, if any, shall be signed with the facsimile signature of the Treasurer of State.

(c) Delivery of the bonds and coupons so executed shall be valid, notwithstanding any change in persons holding such offices occurring after the bonds have been executed.

History. Acts 1987, No. 686, § 7.

15-22-713. Bonds — Sale after notice.

(a) Bonds shall be sold at public sale on sealed bids, after notice published by the Chair of the Arkansas Natural Resources Commission by at least one (1) insertion not less than twenty (20) days before the date of sale in a newspaper published in the City of Little Rock and in a financial newspaper or journal published in the Borough of Manhattan, City and State of New York.

(b) The Arkansas Natural Resources Commission shall award the sale of the bonds to the bidder offering to purchase the bonds at a price which results in the lowest net interest cost to the State of Arkansas,

determined by computing the total interest cost from date to maturity and deducting therefrom any premium bid and adding thereto the amount of any discount bid.

(c) The commission shall reserve the right to reject all bids tendered at the public sale.

(d) The notice shall contain such other terms and provisions as the commission determines to be desirable.

(e) The costs of publication of notices and of printing of the bonds, official statements, and other documents relating to the sale of the bonds shall be paid from the proceeds of the bonds.

(f) The commission may employ administrative agents, fiscal agents, and legal counsel and may pay them reasonable compensation from the proceeds of the bonds.

History. Acts 1987, No. 686, § 8.

15-22-714. Bonds as general obligations of state — Pledge of revenues.

(a) The bonds shall be the direct general obligations of the State of Arkansas for the payment of debt service on which the full faith and credit of the State of Arkansas are irrevocably pledged so long as any such bonds are outstanding.

(b) The bonds shall be payable from the general revenues of the state as that term is defined in the Revenue Stabilization Law, § 19-5-101 et seq., and such amount of general revenues as is necessary is pledged to the payment of debt service on the bonds and shall be and remain pledged for that purpose.

History. Acts 1987, No. 686, § 10.

15-22-715. Payment of debt service — Transfer and use of funds.

(a)(1) On or before commencement of each fiscal year, the Chief Fiscal Officer of the State shall determine the estimated amount required for payment for all or a part of debt service on the bonds issued under this subchapter during that fiscal year, after making deductions therefrom of estimated moneys to be available to the Arkansas Natural Resources Commission from other sources therefor, and shall certify the estimated amount to the Treasurer of State.

(2) The Treasurer of State shall then make monthly transfers from the State Apportionment Fund to the bond fund of such amount of general revenues for allocation, as that term is defined in the Revenue Stabilization Law, § 19-5-101 et seq., as shall be required to pay the maturing debt service on bonds issued under this subchapter.

(b)(1)(A) The Treasurer of State shall make such additional monthly transfer or transfers of general revenues for allocation as the Chief Fiscal Officer of the State shall certify to him or her as being required to enable the commission to establish and thereafter maintain the

Debt Service Reserve Fund to provide a reserve or reserves for payment of debt service on the bonds.

(B) The obligation to make monthly transfers of general revenues for allocation from the State Apportionment Fund to the bond fund and to the Debt Service Reserve Fund shall constitute a first charge against the general revenues for allocation prior to all other uses to which the general revenues for allocation are devoted, either under present law or under any laws that may be enacted in the future.

(2) However, to the extent other general obligation bonds of the state may subsequently be issued, all such general obligation bonds shall rank on a parity of security with respect to payment from general revenues for allocation.

(c) Moneys credited to the bond fund and the Debt Service Reserve Fund shall be used only for the purpose of paying debt service on the bonds, either at maturity or upon redemption prior to maturity, and for that purpose the Treasurer of State is designated disbursing officer to administer the funds in accordance with the provisions of this subchapter.

(d) The Debt Service Reserve Fund shall be held and used to ensure prompt payment of debt service on the bonds in such manner and pursuant to such conditions as may be specified by the commission in the resolution or trust indenture authorizing or securing the bonds.

(e) Moneys in the bond fund and the Debt Service Reserve Fund over and above the amount necessary to ensure the prompt payment of debt service on the bonds, and the establishment and maintenance of a reserve fund, if any, may be used for the redemption of bonds prior to maturity in the manner and in accordance with the provisions pertaining to redemption prior to maturity as set forth in the resolution or trust indenture authorizing or securing the bonds.

History. Acts 1987, No. 686, § 11.

15-22-716. Tax exemption — Legal investment.

(a) All bonds issued under this subchapter and interest on the bonds shall be exempt from all taxes of the State of Arkansas, including income, inheritance, and property taxes.

(b) The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of municipal, county, bank, fiduciary, insurance company, and trust funds.

History. Acts 1987, No. 686, § 12.

15-22-717. Contract not to be impaired — Remedies of bondholder.

(a) This subchapter shall constitute a contract between the State of Arkansas and the holders or registered owners of all bonds issued under this subchapter which shall never be impaired, and any violation of its terms, whether under purported legislative authority or other-

wise, shall be enjoined by the courts at the suit of any bondholder or any taxpayer.

(b) The courts, in like suit against the Arkansas Natural Resources Commission, the Treasurer of State, or other appropriate officer or official of the state, shall prevent a diversion of any revenues pledged under this subchapter and shall compel the restoration of diverted revenues by injunction or mandamus.

(c) In addition and without limitation as to any other appropriate remedy at law or in equity, any bondholder, by an appropriate action, including, without limitation, injunction or mandamus, may compel the performance of all covenants and obligations of the state, its officers, and its officials under this subchapter.

History. Acts 1987, No. 686, § 14.

15-22-718. Creation of rights.

This subchapter shall not create any right of any character and no right of any character shall arise under or pursuant to it unless and until the first series of bonds authorized by this subchapter shall have been sold and delivered.

History. Acts 1987, No. 686, § 15.

15-22-719. Deposit of proceeds of sale of bonds.

(a) The proceeds from the sale of the bonds, together with all revenues derived by the Arkansas Natural Resources Commission from any project financed under this subchapter, shall be deposited by the commission, as received, into trust funds in the State Treasury to accomplish the purposes of this subchapter, in amounts or portions as set forth in the resolution or trust indenture authorizing or securing the bonds issued to finance the development of the project into trust funds created by this section and designated as follows:

(1) Into the Waste Disposal and Pollution Abatement Facilities Construction Fund to provide for the development of projects and the payment of the costs and expenses of the issuance of the bonds;

(2) Into the Waste Disposal and Pollution Abatement Facilities Bond Fund to provide for payment for all or a part of debt service on bonds issued under this subchapter;

(3) Into the Waste Disposal and Pollution Abatement Facilities Debt Service Reserve Fund to provide for a reserve or reserves for payment of debt service on the bonds; and

(4) Into the Waste Disposal and Pollution Abatement Facilities Operation and Maintenance Fund to provide for all or a part of the operation and maintenance of the projects financed under this subchapter.

(b)(1) The Treasurer of State is authorized and directed to establish separate accounts within such funds to correspond to the applicable series of bonds.

(2) In addition, there may be created in the State Treasury such other funds, accounts, or subaccounts as the commission may determine in the resolution or trust indenture to be necessary to accomplish the purposes of this subchapter.

History. Acts 1987, No. 686, § 9.

15-22-720. Investment of moneys.

Any moneys held in any fund created under this subchapter shall be invested by the State Board of Finance to the full extent practicable pending disbursement for the purposes intended. Notwithstanding any other provision of law, the investments shall be in accordance with the terms of the resolution or trust indenture authorizing or securing the series of bonds to which the fund appertains to the extent the terms of such a resolution or trust indenture are applicable.

History. Acts 1987, No. 686, § 18.

15-22-721. Expediting cases.

Any case involving the validity of this subchapter or involving the bonds issued under this subchapter shall be deemed of public interest and shall be advanced by all courts and heard as a preferred cause, and all appeals from judgments or decrees rendered in such cases must be taken within thirty (30) days after rendition of the judgment or decree.

History. Acts 1987, No. 686, § 19.

SUBCHAPTER 8 — ARKANSAS WATER RESOURCES COST SHARE FINANCE ACT

SECTION.

- 15-22-801. Title.
- 15-22-802. Purpose.
- 15-22-803. Definitions.
- 15-22-804. Duties of commission.
- 15-22-805. Loans or grants — Authorized
— Amounts.
- 15-22-806. Loans or grants — Eligibility
— Applications — Awards.

SECTION.

- 15-22-807. Priority list of projects.
- 15-22-808. Arkansas Water Resources
Cost Share Revolving
Fund.
- 15-22-809. Grants.
- 15-22-810. Exceptions to federal coopera-
tion requirement.

15-22-801. Title.

This subchapter shall be known and cited as the “Arkansas Water Resources Cost Share Finance Act”.

History. Acts 1989, No. 257, § 1.

15-22-802. Purpose.

The purpose of this subchapter is to provide the state and local political subdivisions of the State of Arkansas with the nonfederal

share of their financial obligations required under any local cooperative agreements entered into with the federal government.

History. Acts 1989, No. 257, § 2.

15-22-803. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Natural Resources Commission;

(2) "Cooperative agreement" means an agreement entered into between the federal government and the state and a local government in Arkansas;

(3) "Cost sharing" means a program in which the state or local governments in Arkansas are financially responsible for the nonfederal share of various water resources development projects;

(4) "Local governments" means all political subdivisions of the State of Arkansas which shall include, but not be limited to:

(A) Cities of the first class, cities of the second class, and incorporated towns;

(B) All county governments and their agencies;

(C) All regional water districts;

(D) All conservation districts;

(E) All irrigation and drainage improvement districts;

(F) All levee improvement districts;

(G) All drainage improvement districts;

(H) All drainage and levee improvement districts; and

(I) Other political subdivisions of the state;

(5) "Revolving fund" means the Arkansas Water Resources Cost Share Revolving Fund created by this subchapter;

(6) "State" means the State of Arkansas or its instrumentalities; and

(7) "Water resources development project" means the construction, acquisition, ownership, replacement, operation, and maintenance of facilities, including land, easements, and works of improvement, for the protection, conservation, preservation, development, utilization, and proper disposal of the state's water resources and related land resources in order to:

(A) Provide for the people of the state:

(i) Adequate supplies of quality water for municipal, industrial, agricultural, recreational, and domestic purposes;

(ii) Water for navigation; and

(iii) Access to the state's lakes and streams and parks and other recreational sites along their shores; and

(B) Reclaim, preserve, and protect the state's land resources and adequately protect the wealth of the state from disastrous floods.

History. Acts 1989, No. 257, § 3.

15-22-804. Duties of commission.

The Arkansas Natural Resources Commission shall:

- (1) Administer the loan and grant programs authorized under this subchapter;
- (2) Take necessary action to ensure that the funds are used for the purposes established in this subchapter and in accordance with state and federal laws; and
- (3) In accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., promulgate such rules and regulations and procedures necessary for the operation of this program.

History. Acts 1989, No. 257, § 4.

15-22-805. Loans or grants — Authorized — Amounts.

(a) The Arkansas Natural Resources Commission is authorized to make either loans or grants to local governments to provide them with the nonfederal interest's share of the cost share for a water resources development project.

(b)(1) The commission shall not make a loan or grant to a local government for more than fifty percent (50%) of the total project cost for a water resources development project.

(2) If the commission determines to provide assistance for a water resources project without the requirement of the execution of a cooperative agreement, the commission may provide up to sixty-five percent (65%) of the total project cost in the form of a loan or grant to the local government.

History. Acts 1989, No. 257, § 5; 2001, No. 1039, § 1.

15-22-806. Loans or grants — Eligibility — Applications — Awards.

(a)(1) Local governments who have entered into or who are attempting to enter into a cooperative agreement for cost-sharing to finance a water resources development project are eligible to apply for a loan or grant under this subchapter.

(2) Combinations of local governments may apply jointly for loans or grants authorized under this subchapter in accordance with the Inter-local Cooperation Act, § 25-20-101 et seq.

(b) The final award of the loan or grant for cost-sharing purposes shall be made contingent upon actual receipt of federal funding for the federal share of the water resources development project.

(c) The Arkansas Natural Resources Commission, by regulation, shall specify the form and style of any forms needed for application by the local governments for loans or grants.

(d)(1) Beginning each January 1, the commission shall take applications from the state and local governments for grants and loans to be

awarded for water resources development projects for the next fiscal year.

(2) The annual deadline for loan or grant application shall be March 31 of each year.

(3) The commission shall award the grants and loans for the water resources development projects, contingent on the availability of funds, by June 30 of each year.

History. Acts 1989, No. 257, § 6; 1991, No. 786, § 19.

Publisher's Notes. Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 78th General Assembly. All

such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

15-22-807. Priority list of projects.

(a) From each year's applications for grants and loans, the Arkansas Natural Resources Commission shall develop a priority list for water resources development projects which ranks each project in order of its priority.

(b) The priority ranking of water resources development projects shall be based on the following factors:

(1) The overall cost of the project weighted against its potential or predicted benefits;

(2) The potential for the project to provide economic development in the area; and

(3) The commitment of any state or local government funds to the project to contribute to the nonfederal interest's share of the cost of the overall project.

History. Acts 1989, No. 257, § 7.

15-22-808. Arkansas Water Resources Cost Share Revolving Fund.

(a) A revolving fund is created on the books of the Auditor of State and the Treasurer of State entitled the "Arkansas Water Resources Cost Share Revolving Fund" to provide a depository for funds which may be appropriated or otherwise secured for the purposes of cost-sharing with the federal government in local water resources development projects as provided for in this subchapter.

(b)(1) The fund shall be used to provide loans or grants to local governments for the purpose established in this subchapter.

(2) Funds from the repayment of loans from the fund shall be returned to the fund and shall be reused in a manner consistent with the purpose of this subchapter.

(c)(1) Loans from the fund shall be repaid in full at an interest rate up to the maximum allowed under Arkansas Constitution, Article 19, § 13, as amended by Arkansas Constitution, Amendment 60.

(2) The terms and conditions of repayment of the state loans for cost-sharing shall be specified and agreed to in writing prior to the awarding of the loan.

History. Acts 1989, No. 257, § 8.

15-22-809. Grants.

(a) The Arkansas Natural Resources Commission is authorized to use the funds deposited in the Arkansas Water Resources Cost Share Revolving Fund for grants to local governments with limited financial capacity.

(b) In selecting the recipients for state grants authorized in this subchapter, the following factors shall be taken into consideration by the commission:

(1) The financial ability of the local government applicant to provide the cost-sharing funds for the water resources development project, including all available tax sources or assessments;

(2) The burden placed on low income, elderly, and unemployed persons if the local government applicant participates in a cost-sharing project and pays for the nonfederal share through a user fee or property tax; and

(3) The amount of fair user fees or other revenues which the water resources development project may reasonably be expected to generate in excess of those which would amortize the local share of the initial cost and provide for its successful operation and maintenance, including depreciation.

(c) No grant under this subchapter shall be awarded until the local government applicant has furnished the commission with sufficient proof of the exhaustion of all other funding sources and established that a deficiency exists in the amount of local funds necessary for the project.

History. Acts 1989, No. 257, § 8.

15-22-810. Exceptions to federal cooperation requirement.

The Arkansas Natural Resources Commission may provide financial assistance to a local government for water resources development projects under this subchapter without the requirement of execution of a cooperative agreement between the local government and the federal government if the commission determines that:

(1) The water resources development project is of such a type or size that does not make cost sharing through a cooperative agreement efficient or effective; or

(2) Current conditions make the funding of the water resources development project through a cooperative agreement between the federal government and local government within a reasonable time unlikely.

History. Acts 2001, No. 1039, § 2.

SUBCHAPTER 9 — ARKANSAS GROUNDWATER
PROTECTION AND MANAGEMENT ACT

SECTION.	SECTION.
15-22-901. Title.	15-22-910. Groundwater rights — Issuance.
15-22-902. Purpose.	15-22-911. Groundwater rights — General provisions.
15-22-903. Definitions.	15-22-912. Appeals.
15-22-904. Powers of the commission.	15-22-913. Fees.
15-22-905. Powers of commission — Limitations.	15-22-914. Disposition of earnings and fees.
15-22-906. Groundwater protection program.	15-22-915. Metering of certain withdrawals.
15-22-907. Water conservation education and information program.	
15-22-908. Designation of critical areas.	
15-22-909. Groundwater rights — Initiation of regulatory authority within critical areas.	

Effective Dates. Acts 1991, Nos. 154 and 342, § 16: Oct. 1, 1991.

RESEARCH REFERENCES

Ark. L. Rev. Looney, Enhancing the Role of Water Districts in Groundwater Management and Surface Water Utilization in Arkansas, 48 Ark. L. Rev. 643.

15-22-901. Title.

This subchapter shall be known as the “Arkansas Groundwater Protection and Management Act”.

History. Acts 1991, No. 154, § 1; 1991, No. 342, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, Remedies — Restoration Costs, 57 Ark. L. Rev. 697.

CASE NOTES

In General.

Circuit court did not err in permitting the issue of damage to landowners’ groundwater to go to the jury where the landowners did not claim contamination to water they were actually using or con-

suming but, rather, that petroleum vapors were rising from the groundwater and soil and permeating their home; nothing in the Arkansas Groundwater Protection and Management Act forbids a property owner from seeking damages for contami-

nation to groundwater. Felton Oil Co., L.L.C. v. Gee, 357 Ark. 421, 182 S.W.3d 72 (2004).

15-22-902. Purpose.

The State of Arkansas has an abundance of good quality groundwater. In some areas of the state, this water is being mined such that in the future there may not be adequate supplies of good quality groundwater to meet our needs. In order to protect groundwater for the future, it is necessary to reduce groundwater use. It is most desirable that these reductions come from conservation or use of surface water, but in critical groundwater areas it may become necessary to limit groundwater withdrawals through the use of water rights. Should the regulatory provisions be implemented in the future, it is most desirable that day-to-day water management be administered by local districts, and every effort shall be made by the Arkansas Natural Resources Commission to delegate water management powers to qualified local districts. All regulatory powers shall apply only in critical groundwater areas. Programs for water use reporting, education and information, water conservation cost-sharing, and the registration fees shall be administered statewide.

History. Acts 1991, No. 154, § 2; 1991, No. 342, § 2.

CASE NOTES

Cited: Felton Oil Co., L.L.C. v. Gee, 357 Ark. 421, 182 S.W.3d 72 (2004).

15-22-903. Definitions.

As used in this subchapter:

- (1) "Administrative Procedure Act" means the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;
- (2) "Aquifer" means a permeable, water-bearing stratum of rock, sand, or gravel;
- (3) "Beneficial use" means the use of water in such quantity as is economical and efficient and which use is for a purpose and in a manner which is reasonable, not wasteful, and is compatible with the public interest;
- (4) "Commission" means the Arkansas Natural Resources Commission created under § 15-20-201;
- (5) "Conservation district" means conservation districts created under the Conservation Districts Law, § 14-125-101 et seq.;
- (6) "Critical groundwater area" is defined in the Arkansas Water Plan developed by the commission under its authority in § 15-22-503;
- (7) "District" means a conservation district or regional water district;
- (8) "Domestic use" means the use of water for ordinary household purposes, including human consumption, washing, the watering of

domestic livestock, poultry, and animals, and the watering of home gardens for consumption by the household;

(9) "Groundwater" means water beneath the surface of the ground;

(10) "Person" means any natural person, partnership, firm, association, cooperative, municipality, county, public or private corporation, and state or local governmental agency;

(11) "Regional water district" means a regional water distribution district created under The Regional Water Distribution District Act, § 14-116-101 et seq.;

(12) "Sustaining aquifer" means any aquifer excluding the state's alluvial aquifers that is used as a significant source for water supply including, but not limited to, the Cockfield, Sparta, Memphis, Cane River, Carrizo, Wilcox, Nacatoch, Roubidoux, and Gunter aquifers;

(13) "Water right" means the authority or permission issued by the commission under this subchapter to use groundwater within a critical groundwater area;

(14) "Water year" means the twelve-month period beginning October 1 and ending the next September 30; and

(15)(A) "Well" means any hole dug, drilled, or otherwise constructed in the ground for the purpose of withdrawing groundwater.

(B) For the purpose of this subchapter, a well also must have a potential flow rate of fifty thousand (50,000) gallons per day or greater.

History. Acts 1991, No. 154, § 3; 1991, No. 342, § 3; 2001, No. 1426, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Arkansas Water Rights: Review and Legislation, 2001 Arkansas General Assembly, Natural Resources, 24 U. Ark. Consideration for Reform, 25 U. Ark. Little Rock L. Rev. 123 (2002). Little Rock L. Rev. 513.

CASE NOTES

Cited: Felton Oil Co., L.L.C. v. Gee, 357 Ark. 421, 182 S.W.3d 72 (2004).

15-22-904. Powers of the commission.

The Arkansas Natural Resources Commission shall have all powers necessary to effectuate this subchapter, including the power to:

(1) Promulgate rules and regulations for groundwater classification and aquifer use, well spacing, issuance of groundwater rights within critical groundwater areas, and assessment of fees;

(2) Issue subpoenas for any witness to require attendance and testimony and production of relevant books, papers, or other records in any proceeding before the commission;

(3) Administer an oath to any witness in any hearing, investigation, or proceeding before the commission;

(4) At reasonable times, enter upon property for purposes of conducting investigations, studies, or enforcing this subchapter;

(5) Reduce or suspend notice and hearing requirements under this subchapter in times of an emergency;

(6) Issue orders to implement or enforce any of the provisions of this subchapter or regulations under this subchapter;

(7) Delegate any and all powers under this subchapter to the Executive Director of the Arkansas Natural Resources Commission or his or her designee;

(8) Delegate any powers under this subchapter to districts within a critical groundwater area;

(9) Provide technical assistance and establish guidelines which shall be followed by districts which have been granted powers under this subchapter;

(10) Resolve disputes between, approve regulations of, and hear appeals from decisions of districts to which the commission has delegated powers; and

(11) Provide cost share assistance from the Arkansas Water Development Fund not to exceed forty percent (40%) to persons for the installation of approved water conservation and development practices.

History. Acts 1991, No. 154, § 11;
1991, No. 342, § 11.

CASE NOTES

Cited: Felton Oil Co., L.L.C. v. Gee, 357
Ark. 421, 182 S.W.3d 72 (2004).

15-22-905. Powers of commission — Limitations.

The following provisions shall limit the Arkansas Natural Resources Commission's powers under this subchapter:

(1)(A) There will be no reduction or limitation of the withdrawal of groundwater from existing wells in an alluvial aquifer for which a water right is grandfathered under the provisions of § 15-22-910(a)(1) unless alternative surface supplies are available or can be made available at a cost to the person no greater than the operating cost of the person's wells within the critical area, including depreciation costs over the life of the well.

(B) There shall be no reduction or limitation of the withdrawal of groundwater from existing wells in a sustaining aquifer for which a water right is grandfathered under the provisions of § 15-22-910(a)(1) unless alternative surface supplies are available;

(2)(A) In an alluvial aquifer, there will be no reduction or limitation of the withdrawal of groundwater from wells for which a water right has been issued under § 15-22-910 and for which the person holding the right can demonstrate:

(i) A reduction of twenty percent (20%) of his or her use of groundwater by either institution of water conservation measures or

conversion to surface supplies. The demonstrated reduction must be based on the use reported in water year 1986 or later; or

(ii) The implementation of a water conservation plan employing generally accepted water conservation practices approved by the commission.

(B) In sustaining aquifers, the commission may consider voluntary reductions, water use efficiencies, and implementation of water conservation measures in determining limitations or reduction of withdrawals;

(3) There will be no regulation of the withdrawal of groundwater from existing or proposed wells which have a maximum potential flow rate of less than fifty thousand (50,000) gallons per day;

(4) There shall be no regulation of the withdrawals of groundwater from individual household wells used exclusively for domestic use;

(5) REPLACEMENT WELLS:

(A)(i) The owner of an existing well may construct a replacement well after abandoning the existing well.

(ii) To transfer a water right to a replacement well the owner need only submit to the commission notice of construction of a replacement well stating the location and ownership of the original and replacement wells and other relevant information required by the commission.

(B) The original well must be converted to a nonregulated use or plugged in the manner prescribed by the commission; and

(6) Marketers of bottled water and public water supply systems shall at no time be restricted in the place of use of groundwater.

History. Acts 1991, No. 154, § 6; 1991, No. 342, § 6; 2001, No. 1426, §§ 2, 3.

15-22-906. Groundwater protection program.

(a) In order to protect the groundwater of the state, the Arkansas Natural Resources Commission shall develop a comprehensive groundwater protection program.

(b) This shall contain, as a minimum, the following components as the commission deems necessary:

(1) Assessment and monitoring of the availability of groundwater and its quality;

(2) The classification of groundwater and establishment of groundwater criteria and standards; and

(3) The management of groundwater pursuant to this subchapter, including the issuance of water rights, protection of groundwater quality, and establishment of an education and information program.

(c)(1) This program shall not be inconsistent with nor shall it preempt or supersede any regulatory authority currently or in the future vested with the Arkansas Department of Environmental Quality, the State Plant Board, or the Department of Health.

(2) However, no permit or prior authorization from these agencies shall be required to implement the provisions of this subchapter.

History. Acts 1991, No. 154, § 4; 1991, No. 342, § 4; 1999, No. 1164, § 132.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology" renamed to 'Arkansas Department of Environmental Quality'. (a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general

powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

15-22-907. Water conservation education and information program.

(a) The Arkansas Natural Resources Commission or its designee shall develop and implement an education and information program to encourage water conservation by increasing the public's awareness of the need for and techniques available for conservation.

(b) This shall include, as a minimum, the following components as the commission deems necessary:

- (1) Technology transfer;
- (2) Training;
- (3) Technical assistance;
- (4) Research; and
- (5) Demonstration projects.

History. Acts 1991, No. 154, § 12; 1991, No. 342, § 12.

15-22-908. Designation of critical areas.

(a) Before designation of critical groundwater areas, the Arkansas Natural Resources Commission shall describe the proposed action, the reasons therefore, and the recommended boundaries.

(b) Public hearings shall be held in accord with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and shall be held in each county within the proposed critical area.

History. Acts 1991, No. 154, § 5; 1991, No. 342, § 5.

15-22-909. Groundwater rights — Initiation of regulatory authority within critical areas.

(a)(1) When the Arkansas Natural Resources Commission deter-

mines such action to be necessary within a critical area, it will declare that water rights are required for water withdrawal.

(2) Before initiation of the regulatory program, the commission shall describe the proposed action, the reasons therefor, and the recommended boundaries if they differ from the previous critical area designation.

(3) Public hearings shall be held in accord with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and shall be held in each county within the proposed critical area.

(4) After such a declaration, no person shall withdraw groundwater from an existing well or construct a new well within the critical groundwater area without first obtaining a water right.

(5) All determinations for the current water year shall have been made by March 1 of the preceding water year.

(b) There will be no reduction or limitation for a period of four (4) years of the withdrawal of groundwater from an existing well or a well constructed during the first year following initiation of the regulatory authority and for which a water right is issued under the provisions of § 15-22-910(a).

History. Acts 1991, No. 154, § 7; 1991, No. 342, § 7; 2001, No. 1426, § 7.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Arkansas for Reform, 25 U. Ark. Little Rock L. Rev. Water Rights: Review and Consideration 123 (2002).

15-22-910. Groundwater rights — Issuance.

(a) GRANDFATHERING EXISTING WELLS.

(1)(A) Within one (1) year of initiation of the regulatory authority as provided under § 15-22-909, the Arkansas Natural Resources Commission, upon application, shall issue to an applicant within the critical water use area a water right for existing wells equal to the average quantity of water withdrawn for beneficial use over the past three (3) water years.

(B) For wells with reported use levels significantly below normal use levels, prior water year use reports may be used to determine the three-year average in subdivision (a)(1)(A) of this section.

(2) For new wells constructed during the first year of initiation of the regulatory authority as provided under § 15-22-909, the commission, upon application, shall issue to an applicant within the critical water use area a water right equal to the quantity of water necessary for beneficial use.

(3)(A) Failure to apply within this period shall create a conclusive presumption of abandonment of use.

(B) If the landowner desires to receive a water right, he or she must apply for a water right pursuant to subsection (b) of this section.

(4) Water rights issued pursuant to subsection (a) of this section shall be exempt from the public notice requirements described in subsection (b) of this section.

(b) NEW GROUNDWATER RIGHTS APPLICATIONS.

(1) To obtain a water right, application must be made in a form satisfactory to the commission.

(2) The application shall contain information reasonably necessary to assist the commission in making a determination as to issuance of a water right.

(3) Upon receipt of the application, the commission shall cause to be published a notice of application for water rights in a newspaper with statewide circulation.

(4) In consideration of an application for water rights, the commission may:

(A) Grant the application;

(B) Deny the application; or

(C) Grant the application subject to necessary reductions or conditions.

(5) Persons who are or might be affected by issuance may request a hearing before the commission concerning the application within fifteen (15) days of publication of notice.

(c) PRIORITIES. In the issuance of groundwater rights, the commission shall give reasonable preference first to sustaining life, then to maintaining health, and finally to increasing wealth.

(d) REVIEW AND MODIFICATION. Water rights issued under this section shall be subject to review and modification by the commission.

(e) ALTERNATIVE WATER SUPPLIES. In determining the issuance of water rights, the commission shall consider the availability or lack of availability of alternative water supplies.

History. Acts 1991, No. 154, §§ 8, 9; 1991, No. 342, §§ 8, 9; 2001, No. 1426, §§ 4, 5.

15-22-911. Groundwater rights — General provisions.

(a) PURPOSE. Water rights are issued for beneficial uses.

(b) DURATION.

(1) Water rights shall be limited to such period of time as designated by the Arkansas Natural Resources Commission.

(2) In determining that period of time, the commission shall give consideration to the time required to reasonably amortize the investments made by the water user for the use of water, as well as the cost and useful life of the facility.

(c) LIMITATION ON QUANTITY. In the water right, the commission may limit annual withdrawals.

(d) PRECEDENCE.

(1) In the event that two (2) or more competing applications specifying the same priority are made, preference shall be given to a renewal application over an initial application.

(2) On all renewal applications, consideration shall be given to reasonable beneficial use.

(e) CANCELLATION.

(1)(A) A water right may be cancelled if water is used for a purpose other than that for which the water right was issued.

(B) A water user may apply for and may be granted an appropriate change in the use of the water.

(2) A water right may be cancelled for nonuse or failure to put the water to a reasonable beneficial use within a reasonable period of time following the issuance of the water right if the nonuse is for a reason other than implementation of conservation measures, crop rotation, conversion to surface water sources, or climatic conditions.

(3) A water right may be cancelled for failure to report water use for two (2) consecutive years under § 15-22-302 or failure to pay the fee as set out in § 15-22-913 for two (2) consecutive years.

(f) OFF-TRACT USE OF WATER.

(1)(A) The place of use described in the water right is the only realty on which the allocated water may be used, except as provided in § 15-22-905(5).

(B) However, the commission, in times of emergency, may authorize the use of the allocated water on realty other than that described in the water right.

(2) A water right recipient acquiring or leasing additional realty, contiguous or noncontiguous, upon application shall be entitled to an amended water right so as to encompass that realty.

(g) WATER RIGHTS ATTACH TO AND RUN WITH THE LAND. A water right may not be conveyed or otherwise marketed or transferred separate from the realty described in the water right.

(h) AUTOMATICALLY TRANSFERRED. Water rights shall be an incident of surface ownership of the realty and, upon notice to the commission, shall be transferred to the new landowner.

History. Acts 1991, No. 154, § 10;
1991, No. 342, § 10.

15-22-912. Appeals.

Any person aggrieved by decisions and actions under this subchapter by the Arkansas Natural Resources Commission may appeal pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1991, No. 154, § 15;
1991, No. 342, § 15.

15-22-913. Fees.

(a) The Arkansas Natural Resources Commission shall assess annual fees for:

(1) The withdrawal of surface water in the amount of ten dollars (\$10.00) per registered withdrawal point; and

(2) The withdrawal of groundwater in the amount of ten dollars (\$10.00) per registered well.

(b) The fee shall be payable at the time of water use reporting pursuant to §§ 15-22-302 and 15-22-215.

History. Acts 1991, No. 154, § 13; 1991, No. 342, § 13.

15-22-914. Disposition of earnings and fees.

Fees, penalties, and other funds collected under this subchapter shall be deposited in the Arkansas Water Development Fund established by § 15-22-507. Two-thirds ($\frac{2}{3}$) of such funds deposited shall be used for an education and information program and cost sharing for water conservation and development. The remaining one-third ($\frac{1}{3}$) may be used for the administration of this subchapter, and the Arkansas Natural Resources Commission may transfer those funds to the districts delegated authority under this subchapter as it deems necessary.

History. Acts 1991, No. 154, § 14; 1991, No. 342, § 14.

15-22-915. Metering of certain withdrawals.

(a) Any well constructed after September 30, 2001, to withdraw groundwater from a sustaining aquifer shall be equipped with a properly functioning water measuring or metering device acceptable to the Arkansas Natural Resources Commission.

(b) After September 30, 2006, any well withdrawing groundwater from a sustaining aquifer shall be equipped with a properly functioning water measuring or metering device acceptable to the commission.

(c) Data gathered by the metering shall be used when completing the annual water use reports as provided in § 15-22-302.

History. Acts 2001, No. 1426, § 6.

SUBCHAPTER 10 — ARKANSAS WETLANDS MITIGATION BANK ACT

SECTION.

15-22-1001. Short title.

15-22-1002. Policy statement.

15-22-1003. Definitions.

15-22-1004. Banks — Acquisition and protection — Powers of the director of the commission.

15-22-1005. Program for mitigation banks — Program criteria.

15-22-1006. Resource values and credits for mitigation banks — Use and withdrawal of credits — Annual evaluation of system.

15-22-1007. Monitoring activities in mitigation banks — Reports.

SECTION.

15-22-1008. Rules.

15-22-1009. Director to consult and cooperate with other agencies and interested parties — State agencies to use bank.

15-22-1010. Arkansas wetlands mitigation bank funds to be deposited in the Arkansas Water Development Fund — Receipts.

15-22-1011. Sources of funds.

15-22-1012. Use of funds.

15-22-1001. Short title.

This subchapter may be cited as the “Arkansas Wetlands Mitigation Bank Act”.

History. Acts 1995, No. 562, § 1.

15-22-1002. Policy statement.

The purpose of this subchapter is to:

(1) Promote, in concert with federal and other state programs as well as interested parties, the restoration, maintenance, and conservation of aquatic resources, including wetlands, streams, and deep water aquatic habitats;

(2) Improve cooperative efforts among private, nonprofit, and public entities for the restoration, management, and protection of aquatic resources;

(3) Offset losses of aquatic resources values caused by activities that otherwise comply with state and federal law;

(4) Encourage a predictable, efficient regulatory framework for environmentally acceptable mitigation;

(5) Provide an option for accomplishing off-site mitigation when the mitigation is required under a dredge or fill permit; and

(6) Supplement and not in any way abrogate any state or federal law relating to aquatic resources.

History. Acts 1995, No. 562, § 3; 2007, No. 476, § 1.

Amendments. The 2007 amendment substituted “aquatic resources” for “wet-

lands” throughout the section, and substituted “aquatic resources, including wetlands, streams, and deep water aquatic habitats” for “wetlands” in (1).

15-22-1003. Definitions.

As used in this subchapter:

(1) “Aquatic resources” means ecological functions, services, and values provided by the waters of the United States that are subject to compensatory mitigation under section 404 of the Clean Water Act, 33 U.S.C. 1344, and sections 9 and 10 of the Rivers and Harbors Act, 33 U.S.C. 401 and 403, as they existed on January 1, 2007, and Executive Order 11990 issued May 24, 1977, 42 F.R. 26961;

(2) “Commission” means the Arkansas Natural Resources Commission;

(3) “Credit” means a numerical value that represents the aquatic resources functions and value of a site;

(4) “Director” means the Executive Director of the Arkansas Natural Resources Commission;

(5) “Mitigation bank” means a publicly owned and managed aquatic resources site created or restored in accordance with this subchapter to compensate for unavoidable adverse impacts due to activities that otherwise comply with the requirements of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1376, section 404 of the Clean Water Act, 33

U.S.C. 1344, and sections 9 and 10 of the Rivers and Harbors Act, 33 U.S.C. 401 and 403, as they existed on January 1, 2007, and Executive Order 11990 issued May 24, 1977, 42 F.R. 26961, or other laws requiring mitigation;

(6) "Permit action" means activity under a specific dredge or fill permit requested or issued pursuant to section 404 of the Federal Water Pollution Control Act, 33 U.S.C. § 1344, or any other action requiring mitigation; and

(7) "Wetlands Technical Advisory Committee" is a committee made up of the directors or their designees of:

(A) The Arkansas Forestry Commission;

(B) The Arkansas State Game and Fish Commission;

(C) The Arkansas State Highway and Transportation Department;

(D) The Department of Arkansas Heritage;

(E) The Arkansas Department of Environmental Quality; and

(F) Two (2) public members with expertise in aquatic resources ecology appointed by the commission.

History. Acts 1995, No. 562, § 2; 1997, No. 390, § 1; 1999, No. 1164, § 133; 2007, No. 476, § 2.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology" renamed to 'Arkansas Department of Environmental Quality'. (a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements,

financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

Amendments. The 2007 amendment added (1) and redesignated the remaining subdivisions accordingly; substituted "Natural Resources Commission" for "Soil and Water Conservation Commission" in (2) and (4); substituted "aquatic resources" for "wetland" in (3) and (5); added "Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act as they exist on January 1, 2007, and Executive Order 11990 issued May 24, 1977, 42 F.R. 26961" in (5); and substituted "aquatic resources" for "wetlands" in (7)(F).

15-22-1004. Banks — Acquisition and protection — Powers of the director of the commission.

In consultation with the Arkansas Natural Resources Commission and the Wetlands Technical Advisory Committee, the Executive Director of the Arkansas Natural Resources Commission may:

(1) Set a sales price for credits in the mitigation bank on behalf of the commission;

(2) Acquire or accept title, including easements, from willing sellers or donors to approved lands, in the name of the commission, suitable for use in mitigation banks;

(3) Pay costs incurred for alterations needed to create or restore aquatic resources areas for purposes of carrying out the provisions of this subchapter;

(4) Authorize payment of administrative, research, or scientific monitoring expenses of the commission in carrying out the provisions of this subchapter;

(5) Receive funds from whatever source for the voluntary acquisition of a mitigation bank and interests therein;

(6) Enter into contracts with state and federal agencies, nonprofit corporations, or other persons for the management of mitigation bank properties; and

(7)(A) Upon satisfactory establishment of a functioning aquatic resources site, convey mitigation bank properties to other appropriate state agencies for management.

(B) The commission shall reserve such interest in the mitigation bank property as necessary to protect the aquatic resources function and values.

History. Acts 1995, No. 562, § 4; 2007, No. 476, § 3.

Amendments. The 2007 amendment substituted "Banks" for "Wetlands" in the section heading; substituted "Natural Resources Commission" for "Soil and Water Conservation Commission" twice in the

introductory paragraph; substituted "aquatic resources" for "wetlands" throughout the section; inserted "including easements" and "or donors" in (2); substituted "a mitigation bank" for "wetlands" in (5); and inserted "mitigation bank" in (7)(B).

15-22-1005. Program for mitigation banks — Program criteria.

(a) In accordance with the provisions of this subchapter, upon the approval of the Arkansas Natural Resources Commission, the Executive Director of the Arkansas Natural Resources Commission shall initiate and implement a program for mitigation banks.

(b)(1) The commission shall adopt, by rule, standards and criteria for the site selection process, operation, and evaluation of mitigation banks.

(2) Criteria to be considered shall include, but need not be limited to:

(A) Historical aquatic resources trends, including the estimated rate of current and future losses of the respective types of aquatic resources;

(B) The contributions of the aquatic resources to:

(i) Wildlife, migratory birds, and resident species;

(ii) Commercial and sport fisheries;

(iii) Surface and groundwater quality and quantity and flood moderation;

(iv) Habitat and species diversity;

(v) Outdoor recreation, including enhancement of scenic waterways; and

(vi) Scientific and research values;

(C) Location of a mitigation bank in relation to the:

(i) Location of permit actions where mitigation banks might be used;

(ii) Probability of establishing successful mitigation bank projects;

(iii) Maximization of aquatic resources functions and values; and

(D) Regional economic needs.

(c) For each mitigation bank, the director shall establish a well-defined plan, including preliminary objectives, an inventory of resource values, and an evaluation and monitoring program.

(d) Lands for the mitigation bank shall not be acquired by condemnation.

History. Acts 1995, No. 562, §§ 4, 5; 2007, No. 476, § 4.

Amendments. The 2007 amendment substituted “mitigation banks” for “wetlands mitigation banks” in the section heading; substituted “aquatic resources” for “wetlands” or “wetland” throughout

the section; substituted “Natural Resources Commission” for “Soil and Water Conservation Commission” twice in (a); substituted “of a mitigation bank in relation” for “of mitigation bank sites in relation” in (b)(2)(C); and made stylistic changes.

15-22-1006. Resource values and credits for mitigation banks — Use and withdrawal of credits — Annual evaluation of system.

(a) For each mitigation bank, the Executive Director of the Arkansas Natural Resources Commission, in consultation with the Wetlands Technical Advisory Committee, shall establish a system of resource values and credits consistent with compensatory mitigation under section 404 of the Clean Water Act, 33 U.S.C. 1344, and sections 9 and 10 of the Rivers and Harbors Act, 33 U.S.C. 401 and 403, as they existed on January 1, 2007, and Executive Order 11990 issued May 24, 1977, 42 F.R. 26961.

(b) The director may sell credits from any mitigation bank site prior to the establishment of aquatic resources functions if, upon review of the site plan, the director determines that the implementation of the plan will likely result in the established aquatic resources function on the site.

(c) The price for any mitigation credit shall be set at an amount that will compensate the state for all of the costs and expenses the state has incurred and is expected to incur in establishing and maintaining that portion of the mitigation bank.

(d) The director annually shall:

(1) Evaluate the aquatic resources functions and values created within each aquatic resources mitigation bank site; and

(2)(A) Compare the current functions and values with the functions and values that the director anticipated the mitigation bank would provide.

(B) If the director finds any significant disparity between the actual and anticipated functions and values, the director shall:

(i) Suspend the withdrawal of credits to that mitigation bank; or

- (ii) Take prompt action to assure that the anticipated functions and values are established.

History. Acts 1995, No. 562, § 6; 1997, No. 390, § 2; 2007, No. 476, § 5.

Amendments. The 2007 amendment substituted “aquatic resources” for “wetlands” or “wetland” throughout the section; and in (a), substituted “Natural Resources Commission” for “Soil and Water Conservation Commission” and added “consistent with compensatory mitigation

under Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act as they exist on January 1, 2007, and Executive Order 11990 issued May 24, 1977, 42 F.R. 26961”; substituted “the mitigation bank” for “the site” in (d)(2)(A); and substituted “mitigation bank” for “mitigation site” in (d)(2)(B)(i).

15-22-1007. Monitoring activities in mitigation banks — Reports.

(a) The Executive Director of the Arkansas Natural Resources Commission shall maintain a record of actions for each mitigation bank and conduct monitoring of banks with moneys set aside for that purpose in the Arkansas Water Development Fund.

(b) The director shall provide annual reports to the Arkansas Natural Resources Commission and the Wetlands Technical Advisory Committee of moneys spent and received for each mitigation bank.

History. Acts 1995, No. 562, § 7; 2007, No. 476, § 6.

Amendments. The 2007 amendment substituted “Natural Resources Commis-

sion” for “Soil and Water Conservation Commission” in (a) and (b); and substituted “each mitigation bank” for “each wetland mitigation bank” in (b).

15-22-1008. Rules.

The Arkansas Natural Resources Commission shall adopt rules necessary and convenient to carry out the provisions of this subchapter.

History. Acts 1995, No. 562, § 8; 2007, No. 476, § 7.

Amendments. The 2007 amendment

substituted “Natural Resources Commission” for “Soil and Water Conservation Commission.”

15-22-1009. Director to consult and cooperate with other agencies and interested parties — State agencies to use bank.

(a) The provisions of this subchapter shall be carried out by the Executive Director of the Arkansas Natural Resources Commission in consultation with the Wetlands Technical Advisory Committee.

(b) All public agencies requiring permit action mitigation, when practicable, shall use mitigation created under this subchapter.

History. Acts 1995, No. 562, § 9; 2007, No. 476, § 8.

Amendments. The 2007 amendment

substituted “Natural Resources Commission” for “Soil and Water Conservation Commission” in (a).

15-22-1010. Arkansas wetlands mitigation bank funds to be deposited in the Arkansas Water Development Fund — Receipts.

(a) All moneys received for carrying out the provisions of this subchapter shall be deposited in the Arkansas Water Development Fund.

(b)(1) The Arkansas Natural Resources Commission shall keep a record of all moneys deposited in and withdrawn from the fund.

(2) The record shall indicate by separate cumulative accounts the sources from which the moneys are derived and the activity against which each withdrawal is charged.

History. Acts 1995, No. 562, § 10; substituted “Natural Resources Commission” for “Soil and Water Conservation Commission” in (b)(1).
2007, No. 476, § 9.

Amendments. The 2007 amendment Commission” in (b)(1).

15-22-1011. Sources of funds.

The following moneys shall be paid into the Arkansas Water Development Fund and used for purposes contained in this subchapter:

(1) Moneys received from the sale of mitigation bank credits;

(2) Any moneys appropriated for that purpose by the General Assembly;

(3) Moneys obtained by gift, bequest, donation, or grant from any public or private source for the purposes of carrying out the intent of this subchapter;

(4) Moneys obtained from state financial assistance programs for the purpose of carrying out the intent of this subchapter; and

(5) Moneys obtained from interest or other earnings from investments of moneys set aside for carrying out the purposes of this subchapter.

History. Acts 1995, No. 562, § 11.

15-22-1012. Use of funds.

The Executive Director of the Arkansas Natural Resources Commission may use the moneys in the Arkansas Water Development Fund for the following purposes:

(1) For the voluntary acquisition of land suitable for use in mitigation banks;

(2) To pay for costs incurred for alterations needed to create, restore, or enhance aquatic resources areas for purposes of carrying out the provisions of this subchapter;

(3) For payment of administrative, research, or scientific monitoring expenses of the Arkansas Natural Resources Commission in carrying out the provisions of this subchapter;

(4) To repay financial assistance received from state financial assistance programs, including interest and applicable fees, used for the purposes of carrying out the intent of this subchapter; and

(5) Any other purpose related to wetland, stream, deep water aquatic habitat, or aquatic resources creation or restoration.

History. Acts 1995, No. 562, § 12; 2007, No. 476, § 10.

Amendments. The 2007 amendment substituted "Natural Resources Commission" for "Soil and Water Conservation

Commission" throughout the section; substituted "aquatic resources" for "wetland" in (2); and substituted "wetland, stream, deep water aquatic habitat, or aquatic resources" for "wetlands" in (5).

SUBCHAPTER 11 — SAFE DRINKING WATER FUND

SECTION.

- 15-22-1101. Definitions.
- 15-22-1102. Creation — Terms and conditions for expenditures — Special accounts.
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SECTION.

- 15-22-1107. Collection of fees.
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- 15-22-1112. Interest rates on loans.

A.C.R.C. Notes. Acts 2003, No. 465, § 1, provided: "TRANSFER OF FUND.

(a) The Safe Drinking Water Fund established by Act 718 of 1991, as amended, of the Arkansas Development Finance Authority and its powers, duties, functions, assets, records, properties, funds, and appropriations are transferred by Type 2 transfer as provided in Arkansas Code § 25-2-105 to the Arkansas Soil and Water Conservation Commission.

"(b) For the purposes of this section, the Arkansas Soil and Water Conservation Commission shall be considered a principal department established by Act 38 of 1971."

Effective Dates. Acts 1997, No. 772, § 14: Mar. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an immediate need for improvements to water systems in the state and that the provisions of this act are immediately needed to provide an additional method of financing such improvements in connection with federal programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall become effective on the date of its

approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 465, § 6: July 1, 2003. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that administration of the Safe Drinking Water Fund is of critical importance to the citizens of Arkansas, that the fund may be administered more efficiently by an agency that specializes in the administration of numerous other revolving loan programs associated with water development projects, and that the provisions of this act are necessary to preserve and improve the efficient administration of these programs. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effective from and after July 1, 2003."

Acts 2009, No. 457, § 14: Mar. 18, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the United States Government has enacted legislation to provide states with emergency assistance in the face of national economic crisis; and this act is immediately necessary to allow the state to timely meet the requirements of the federal stimulus act. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

15-22-1101. Definitions.

As used in this subchapter:

(1) "Administrative account" means the Drinking Water State Administrative Account established by this subchapter within the Safe Drinking Water Fund;

(2) "Authority" means the Arkansas Development Finance Authority or a successor agency or commission of the state;

(3) "Commission" means the Arkansas Natural Resources Commission or a successor agency or commission of the state;

(4) "Department" means the Department of Health or a successor agency of the state;

(5) "Fund" means the Safe Drinking Water Fund established by this subchapter;

(6) "Owner" means the owner or prospective owner of a water system, excluding any federal agencies;

(7) "Revolving loan account" means the Drinking Water State Revolving Loan Fund Account established by this subchapter within the fund;

(8) "Safe Drinking Water Act" means the Safe Drinking Water Act Amendments of 1996 and its subsequent amendments or successor provisions;

(9) "Set aside account" means the Drinking Water State Set Aside Account established by this subchapter within the fund;

(10) "State" means the State of Arkansas;

(11) "State grants account" means the Drinking Water State Grants Account established by this subchapter within the fund; and

(12)(A) "Water system" means a public water system within the meaning of the Safe Drinking Water Act.

(B) The water system may be owned publicly or privately and shall include particularly, without limitation:

(i) Distribution and transmission lines;

(ii) Storage, production, pumping, and treatment facilities;

(iii) Impoundments;

(iv) Reservoirs;

(v) Wells;

(vi) Source water protection;

- (vii) Land;
- (viii) Rights-of-way; and
- (ix) Conservation easements.

History. Acts 1997, No. 772, § 1; 2009, No. 457, § 1.

Amendments. The 2009 amendment inserted “or commission” in (2); substituted “Arkansas Resources Commission” for “Arkansas Soil and Water Conservation Commission” in (3); subdivided (12);

and made related and minor stylistic changes.

U.S. Code. The federal Safe Drinking Water Act Amendments of 1996 referred to in this section is Pub. L. No. 104-182, 110 Stat. 1613, codified primarily at 42 U.S.C. § 300f et seq.

15-22-1102. Creation — Terms and conditions for expenditures — Special accounts.

(a)(1) There is established on the books of the Arkansas Natural Resources Commission a special restricted fund to be known as the “Safe Drinking Water Fund”, which shall be maintained in perpetuity and administered by the commission and the Department of Health under this subchapter for the purposes stated in this subchapter.

(2) The following shall be deposited into the fund:

(A) Grants from the federal government or its agencies allotted to the state for capitalization of the fund;

(B) State matching grants when required;

(C) Proceeds of bonds issued by the commission or the Arkansas Development Finance Authority for capitalization of the fund;

(D) Principal, interest, and premiums on loans provided; and

(E) Bonds, notes, and other evidences of indebtedness purchased with moneys in the fund.

(3) The commission may deposit loans made to and bonds, notes, and other evidences of indebtedness issued by owners to finance or refinance the planning, design, acquisition, construction, expansion, equipping, rehabilitation, or consolidation of water systems or parts of water systems into the fund.

(b) Moneys in the fund shall be expended in a manner consistent with the terms and conditions of applicable federal and state capitalization grants and may be used:

(1) To provide loans for the planning, design, acquisition, construction, expansion, equipping, rehabilitation, consolidation, or refinancing of water systems or parts of water systems;

(2) Subject to subsections (c)-(e) of this section and subject to the approval of the commission, to secure the payment of the principal of and premium, if any, and interest on and to pay costs incurred in connection with bonds issued by the commission or the authority if proceeds of the bonds are deposited into the Drinking Water State Revolving Loan Fund Account;

(3) To pay the principal of and premium, if any, and interest on and to pay costs incurred in connection with bonds issued by the commission or the authority if proceeds of the bonds are deposited into the Drinking Water State Revolving Loan Fund Account;

(4) To purchase bonds, notes, or other evidences of indebtedness issued by owners to finance or refinance the planning, design, acquisition, construction, expansion, equipping, rehabilitation, or consolidation of water systems or parts of water systems;

(5) To fund other water system programs that the federal or state government may allow in the future;

(6) To fund the administrative expenses of the commission relating to the responsibilities and requirements of this subchapter and the Safe Drinking Water Act;

(7) To fund technical assistance for water systems, assistance to state programs such as the public water system supervisory, source water protection, capacity development, health effects studies, unregulated contaminant monitoring, small system technical assistance, operation and training certification programs, and other purposes permitted by the Safe Drinking Water Act;

(8) To provide for any other expenditures consistent with applicable federal and state law;

(9) To make grants or loans to the Construction Assistance Revolving Loan Fund established by § 15-5-901, in amounts approved by the commission, consistent with applicable federal law;

(10) Subject to subsections (c)-(e) of this section and subject to the approval of the commission, to secure the payment of the principal of and premium, if any, and interest on bonds issued by the commission or the authority if proceeds of the bonds are deposited into the Construction Assistance Revolving Loan Fund established by § 15-5-901, consistent with applicable federal law;

(11) Subject to subsections (c)-(e) of this section and subject to the approval of the commission, to pay the principal of and premium, if any, and interest on and to pay costs incurred in connection with bonds issued by the commission or the authority if proceeds of the bonds are deposited into the Construction Assistance Revolving Loan Fund established by § 15-5-901, consistent with applicable federal law; or

(12)(A) To make grants for the planning, design, acquisition, construction, expansion, equipping, rehabilitation, consolidation, or refinancing of water systems or parts of water systems.

(B) However, grants may be made only from moneys in the fund provided by the federal government under the Safe Drinking Water Act to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants or any combination of principal, negative interest loans, or grants.

(c)(1) There is established a separate account within the fund designated the "Drinking Water State Administrative Account", into which moneys provided by the federal government pursuant to the Safe Drinking Water Act for the purpose of administering programs funded by the Safe Drinking Water Act and fees pursuant to §§ 15-22-1106 and 15-22-1107 shall be deposited.

(2) Moneys in the administrative account may be expended by the commission for administrative costs of programs funded by the Safe Drinking Water Act.

(3) Moneys in the Drinking Water State Administrative Account shall never be pledged for the payment of or as security for any bonds issued by the authority or the commission.

(d)(1) There is established a separate account within the fund designated the "Drinking Water State Set Aside Account", into which moneys provided by the federal government pursuant to the Safe Drinking Water Act for the purpose of funding costs of technical assistance to water systems, assistance to state programs such as the public water system supervisory, source water protection, capacity development, health effects studies, unregulated contaminant monitoring, small system technical assistance, and operation and training certification, and other purposes permitted by the Safe Drinking Water Act to be paid from set asides, shall be deposited.

(2) Moneys in the Drinking Water State Set Aside Account may be expended for the purpose of funding the cost of assistance to water systems, assistance to state programs such as public water system supervisory, source water protection, capacity development, health effects studies, unregulated contaminant monitoring, small system technical assistance, and operator training and certification programs, and other purposes permitted by the Safe Drinking Water Act to be paid from set asides.

(3) Moneys in the Drinking Water State Set Aside Account shall never be pledged for the payment of or as security for any bonds issued by the authority or the commission.

(e)(1) There is established a separate account within the fund designated the "Drinking Water State Grants Account", into which moneys appropriated by the state for deposit into the fund shall be deposited.

(2)(A) Moneys in the Drinking Water State Grants Account may be expended for the same purposes as other moneys in the fund.

(B) However, moneys in the Drinking Water State Grants Account shall never be pledged for the payment of or as security for any bonds issued by the commission or the authority.

(f)(1) There is established a separate account within the fund, designated the "Drinking Water State Revolving Loan Fund Account", into which shall be deposited moneys provided by:

(A) The federal government pursuant to the Safe Drinking Water Act;

(B) Proceeds of bonds issued by the commission or the authority; and

(C) Other amounts, excluding state appropriations, received pursuant to § 15-22-1105,

for the purpose of providing financial assistance to owners in connection with the planning, design, acquisition, construction, expansion, equipping, or rehabilitation of a water system, or parts of a water system.

(2) Moneys in the Drinking Water State Revolving Loan Fund Account may also be expended for the purposes set forth in subdivisions (b)(1)-(5) and (b)(8)-(12) of this section.

(g) The commission may establish and maintain additional accounts within the fund or subaccounts within the accounts established by this section.

(h) The commission shall maintain the fund at the authority or at one (1) or more financial institutions within or without the state.

History. Acts 1997, No. 772, § 2; 2003, No. 465, § 2; 2009, No. 457, §§ 2, 3.

A.C.R.C. Notes. Acts 2003, No. 465, § 1, provided: "TRANSFER OF FUND.

(a) The Safe Drinking Water Fund established by Act 718 of 1991, as amended, of the Arkansas Development Finance Authority and its powers, duties, functions, assets, records, properties, funds, and appropriations are transferred by Type 2 transfer as provided in Arkansas Code § 25-2-105 to the Arkansas Soil and Water Conservation Commission.

"(b) For the purposes of this section, the Arkansas Soil and Water Conservation Commission shall be considered a principal department established by Act 38 of 1971."

Amendments. The 2009 amendment, in (a), substituted "Arkansas Natural Resources Commission" for "Arkansas Soil and Water Conservation Commission" in (a)(1), and substituted "loans made to and" for "proceeds from loans" in (a)(3); inserted "the planning, design, acquisition, construction, expansion, equipping, rehabilitation, or consolidation of" in (a)(3) and (b)(4); inserted (b)(11) and (b)(12); substituted "(b)(8)–(12)" for "(b)(8)–(10)" in (f)(2); and made related and minor stylistic changes.

U.S. Code. The Safe Drinking Water Act, referred to in this section, is codified as 42 U.S.C.S. § 300f et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Natural Resources, Act Pertaining

to Water Resources, 26 U. Ark. Little Rock L. Rev. 438.

15-22-1103. Administration of fund generally.

(a)(1) Except for the Drinking Water State Set Aside Account, the Safe Drinking Water Fund shall be administered by the Arkansas Natural Resources Commission, and the commission may establish procedures and adopt rules as may be required to administer the fund and programs financed in whole or in part with moneys in the fund in accordance with federal or state law providing for water systems, including particularly, without limitation the Safe Drinking Water Act.

(2) The commission is authorized to enter into contracts and other agreements in connection with the operation of the fund, including, but not limited to, contracts and agreements with federal agencies, owners, the Arkansas Development Finance Authority, the Department of Health, and other persons to the extent necessary or convenient for the implementation of the fund and programs financed in whole or in part with moneys in the fund.

(3) The commission shall execute capitalization grant agreements on behalf of the state in order to obtain funds under the Safe Drinking Water Act.

(4)(A) Notwithstanding subdivisions (a)(1)–(3) of this section, the department shall have the authority to establish a priority list for water systems, the owners of which are eligible to receive financial

assistance from moneys in the Drinking Water State Revolving Loan Fund Account.

(B) The department shall also have the authority to carry out oversight and related activities, other than financial administration, with respect to financial assistance.

(C) The department may delegate its authority under this subsection to the commission.

(b) The commission shall maintain full authority for the operation of the fund except the Drinking Water State Set Aside Account in accordance with applicable federal and state law, including withdrawals necessary to achieve the intended purposes of the fund.

(c) To the extent moneys provided by the federal government under the Safe Drinking Water Act and nonappropriated state matches do not designate the account into which those moneys shall be deposited, the moneys shall be deposited into the accounts within the fund as designated by the commission.

History. Acts 1997, No. 772, § 3; 2003, No. 465, § 2; 2009, No. 457, §§ 4, 5.

Amendments. The 2009 amendment, in (a)(1), substituted “Arkansas Natural Resources Commission” for “Arkansas Soil and Water Conservation Commission,” and substituted “rules” for “regula-

tions”; substituted “provided by” for “received from” in (c); and made a minor stylistic change.

U.S. Code. The Safe Drinking Water Act, referred to in this section, is codified as 42 U.S.C.S. § 300f et seq.

15-22-1104. Administration of set aside account.

(a)(1) The Drinking Water State Set Aside Account shall be administered by the Department of Health.

(2) The department may establish procedures and adopt rules required to administer the account and programs financed in whole or in part with moneys in the account in accordance with federal or state law providing for water systems, including, without limitation the Safe Drinking Water Act, and to enter into contracts and other agreements in connection with the operation of the account, including without limitation contracts and agreements with federal agencies, the Arkansas Development Finance Authority, the Arkansas Natural Resources Commission, and other parties to the extent necessary or convenient for the implementation of the Safe Drinking Water Fund and programs financed in whole or in part with moneys in the fund.

(b) The department shall maintain full authority for the operation of the account in accordance with applicable federal and state law, including withdrawals necessary to achieve the intended purposes of the account.

History. Acts 1997, No. 772, § 4; 2003, No. 465, § 2; 2009, No. 457, § 6.

Amendments. The 2009 amendment, in (a)(2), substituted “rules” for “regulations as may be,” substituted “Arkansas Natural Resources Commission” for “Ar-

kansas Soil and Water Conservation Commission,” and made minor stylistic changes.

U.S. Code. The Safe Drinking Water Act, referred to in this section, is codified as 42 U.S.C.S. § 300f et seq.

15-22-1105. Authority to accept grants — Deposit of funds received.

(a) The Arkansas Natural Resources Commission and the Arkansas Development Finance Authority as agent for the commission may accept grants for the use of the Safe Drinking Water Fund from any state or federal agencies, municipalities, corporations, foundations, individual donors, or authorities, specifically including without limitation appropriations from the State Treasury as heretofore or hereafter provided.

(b) All moneys received by the commission or the authority under the provisions of this subchapter shall be deposited as and when received in the fund except as otherwise specifically provided by federal or state law.

(c)(1) Except for moneys hereafter deposited in or paid to the commission or the authority for deposit in the Drinking Water State Grants Account, all moneys now or hereafter received for, deposited in, or paid to the commission or the authority for deposit in the fund are specifically declared to be cash funds restricted in their use and shall not be deposited in the State Treasury or deemed to be a part of the State Treasury for the purposes of Arkansas Constitution, Article 5, § 29; Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any other constitutional or statutory provisions but shall be held and applied by the commission or the authority as agent for the commission solely for the uses set forth in this subchapter.

(2) Interest and other moneys received from the investment of moneys, the purchase of bonds, notes, or other evidences of indebtedness issued by owners or the making of loans with moneys in the fund including in each case moneys in the Drinking Water State Grants Account are declared to be cash funds restricted in their use and shall not be deposited in the State Treasury but shall be held and applied by the commission and the authority as agent for the commission solely for the uses set forth in this subchapter.

History. Acts 1997, No. 772, § 5; 2003, No. 465, § 2; 2009, No. 457, § 7.

Amendments. The 2009 amendment, in (a), substituted “Arkansas Natural Re-

sources Commission” for “Arkansas Soil and Water Conservation Commission,” substituted “donors” for “donees,” and made minor stylistic changes.

15-22-1106. Fees for services provided by commission.

(a)(1) The Arkansas Natural Resources Commission may establish and collect fees for its technical and administrative services in connection with the planning, design, acquisition, construction, expansion, equipping, or rehabilitation of water systems or parts of water systems financed in whole or in part with moneys in the Safe Drinking Water Fund.

(2) The authority granted in this section is supplemental to the authority granted to the commission under other laws to establish fees for its services.

(b) The fees shall be payable in any one (1) or more of the following methods from:

(1) Proceeds of loans, bonds, notes, or other evidences of indebtedness of an owner purchased from moneys in the fund;

(2) Proceeds of bonds issued by the commission or the Arkansas Development Finance Authority in connection with the fund; or

(3) Periodic payments due on the loans, bonds, notes, or other evidences of indebtedness of an owner purchased with moneys in the fund.

History. Acts 1997, No. 772, § 6; 2003, No. 465, § 2; 2009, No. 457, § 8.

Amendments. The 2009 amendment substituted "Arkansas Natural Resources

Commission" for "Arkansas Soil and Water Conservation Commission" in (a)(1); inserted "loans" in (b)(1) and (b)(3); and made related and minor stylistic changes.

15-22-1107. Collection of fees.

If requested by the Arkansas Natural Resources Commission, the Arkansas Development Finance Authority shall collect the fees from the owners receiving financial assistance from the Safe Drinking Water Fund and deposit the fees into the Drinking Water State Administrative Account within five (5) days after each periodic payment is made.

History. Acts 1997, No. 772, § 7; 2009, No. 457, § 8.

Amendments. The 2009 amendment made stylistic changes.

15-22-1108. Federal grants deposited into fund.

(a) Notwithstanding the provisions of §§ 19-6-108 and 19-6-601, grants to the state received by the Treasurer of State from the federal government for deposit into the Safe Drinking Water Fund are declared to be cash funds restricted in their use and dedicated to be used solely as authorized in this subchapter.

(b) The Arkansas Natural Resources Commission and the Arkansas Development Finance Authority may accept moneys for deposit into the fund from allocations from the Treasurer of State as provided in this section.

History. Acts 1997, No. 772, § 8; 2003, No. 465, § 3; 2009, No. 457, § 9.

Amendments. The 2009 amendment, in (b), substituted "Arkansas Natural Re-

sources Commission" for "Arkansas Soil and Water Conservation Commission" and made a minor stylistic change.

15-22-1109. Use of Drinking Water State Revolving Loan Fund Account.

(a) The Arkansas Natural Resources Commission and with the approval of the commission the Arkansas Development Finance Authority may use the moneys in the Drinking Water State Revolving Loan Fund Account excluding the Drinking Water State Grants Account and the assets acquired with moneys in the Drinking Water State Revolving Loan Fund Account to secure the payment of the principal of and

premium, if any, and interest on bonds issued by the commission or the authority if proceeds of the bonds are deposited into the Drinking Water State Revolving Loan Fund Account and pay the principal of and premium, if any, and interest on and to pay costs incurred in connection with bonds issued by the commission or the authority if proceeds of the bonds are deposited into the Drinking Water State Revolving Loan Fund Account.

(b) Subject to § 15-22-1102(c)-(e), the commission and with the approval of the commission the authority may pledge the Drinking Water State Revolving Loan Fund Account excluding the Drinking Water State Grants Account and pledge the assets acquired with moneys in the Drinking Water State Revolving Loan Fund Account to secure the payment of the principal of and premium, if any, and interest on bonds issued by the commission or the authority if proceeds of the bonds are deposited into the Construction Assistance Revolving Loan Fund under § 15-5-901 et seq., consistent with applicable federal law and pay the principal of and premium, if any, and interest on and to pay costs incurred in connection with bonds issued by the commission or the authority if proceeds of the bonds are deposited into the Construction Assistance Revolving Loan Fund under § 15-5-901 et seq., consistent with applicable federal law.

History. Acts 1997, No. 772, § 9; 2003, No. 465, § 3; 2009, No. 457, § 10.

Amendments. The 2009 amendment, in (a), substituted “Arkansas Natural Resources Commission” for “Arkansas Soil and Water Conservation Commission” and inserted “and pay the principal ...

Drinking Water State Revolving Loan Fund Account”; in (b), inserted “Subject to § 15-22-1102(c)-(e)” and “and pay the principal ... consistent with applicable federal law”; and made minor stylistic changes.

15-22-1110. Withholding general revenue turnback.

(a) Should any city, town, county, or political subdivision receiving general revenue turnback funds as defined in the Revenue Stabilization Law, § 19-5-101 et seq., fail, neglect, or refuse to pay any installment of principal, interest, or financing fee for a period of more than ninety (90) days past the due date in accordance with the written instrument for the repayment of its bonds, notes, or other evidences of indebtedness purchased with moneys in the Drinking Water State Revolving Loan Fund Account, the Arkansas Natural Resources Commission after notification to the city, town, county, or political subdivision may certify to the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State the name of the city, town, county, or political subdivision and the amount of deficiencies ninety (90) days or more past due.

(b) Upon certification, the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State are directed to withhold from the city’s, town’s, county’s, or other political subdivision’s share of general revenue turnback as the share is defined in the Revenue Stabilization Law, § 19-5-101 et seq., the amount so certified as due

and to transfer the amount to the Drinking Water State Revolving Loan Fund Account and the Drinking Water State Administrative Account as follows:

(1) Amounts withheld as fees shall be transferred to the Drinking Water State Administrative Account; and

(2) Amounts withheld as principal and interest shall be transferred to the Drinking Water State Revolving Loan Fund Account.

History. Acts 1997, No. 772, § 10; substituted "Arkansas Natural Resources Commission" for "Arkansas Soil and Water Conservation Commission" in (a).

Amendments. The 2009 amendment

15-22-1111. Substitution of loans.

(a) The Arkansas Natural Resources Commission may remove any loan, bond, note, or other evidence of indebtedness purchased with moneys in the Drinking Water State Revolving Loan Fund Account from that account and substitute another loan, bond, note, or other evidence of indebtedness not then in default as to payment of any installment of principal, interest, or financing fee, and having an equal or greater outstanding principal balance, made by the commission for a purpose authorized by this subchapter.

(b)(1) The commission may forgive principal of loans made and bonds, notes, and other evidences of indebtedness purchased with moneys in the account.

(2) However, principal may be forgiven only for loans made and bonds, notes, and other evidences of indebtedness purchased with moneys in the account provided by the federal government under the Safe Drinking Water Act to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants or any combination of principal, negative interest loans, or grants.

History. Acts 2003, No. 465, § 4; 2009, No. 457, § 12.

Amendments. The 2009 amendment added (b) and redesignated the remaining

text accordingly; and substituted "Arkansas Natural Resources Commission" for "Arkansas Soil and Water Conservation Commission" in (a).

15-22-1112. Interest rates on loans.

(a) The loans made and bonds, notes, and other evidences of indebtedness purchased with moneys in the Drinking Water State Revolving Loan Fund Account shall bear interest at rates of interest, including without limitation negative rates of interest, established by the Arkansas Natural Resources Commission.

(b) However, the commission may establish negative rates of interest only for loans made and bonds, notes, and other evidences of indebtedness purchased with moneys in the account provided by the federal government under the Safe Drinking Water Act to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants or any combination of these.

(c) Notwithstanding any other provision of law, loans, bonds, notes, and other evidences of indebtedness issued by owners may bear interest at a negative rate if they are purchased with moneys in the Drinking Water State Revolving Loan Fund Account.

History. Acts 2009, No. 457, § 13.

SUBCHAPTER 12 — SPARTA AQUIFER CRITICAL GROUNDWATER COUNTIES' REMEDATION ACT

SECTION.

- 15-22-1201. Title.
- 15-22-1202. Legislative findings and intent.
- 15-22-1203. Definitions.
- 15-22-1204. Construction and enumeration.
- 15-22-1205. Sparta Aquifer critical groundwater county conservation boards.
- 15-22-1206. Petition — Commission report.
- 15-22-1207. Court order — Notice and hearing.
- 15-22-1208. County conservation board members.

SECTION.

- 15-22-1209. Additional county conservation board members.
- 15-22-1210. Oath of office — Vacancy.
- 15-22-1211. Compensation — Liability — Meetings.
- 15-22-1212. Powers of county conservation board.
- 15-22-1213. Annual financial audit and report.
- 15-22-1214. Water conservation levy.
- 15-22-1215. Monthly conservation fee.
- 15-22-1216. Meter required.
- 15-22-1217. Violation — Penalty.
- 15-22-1218. Rules and regulations.

Effective Dates. Acts 1999, No. 1050, § 23; Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty Second Arkansas General Assembly that particular counties in this State face critical water shortages due to depletion of Sparta aquifer water and that these shortages are subject to remediation only by the immediate conjunctive use of surface water and groundwater. This act would allow the most critical counties to reduce the use of ground water and substitute available surface water. Therefore,

an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-22-1201. Title.

This subchapter may be known and cited as the "Sparta Aquifer Critical Groundwater Counties' Remediation Act".

History. Acts 1999, No. 1050, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Arkansas Water Rights: Review and Consideration for Reform, 25 U. Ark. Little Rock L. Rev. 123 (2002).

15-22-1202. Legislative findings and intent.

It is the intent of this subchapter to make available revenues and resources to discourage the withdrawal of Sparta Aquifer water by certain large water users in Bradley, Calhoun, Columbia, Jefferson, Ouachita, and Union counties.

History. Acts 1999, No. 1050, § 2; 2005, No. 1774, § 1.

Amendments. The 2005 amendment deleted former (a) and the subsection (b) designation; and, in the remaining text, deleted “address this crisis and to” following “resources to” and inserted “Jefferson.”

15-22-1203. Definitions.

As used in this subchapter:

(1) “Acquire” means to acquire by purchase, lease, devise, gift, or other mode of acquisition and by any method selected by a Sparta Aquifer critical groundwater county conservation board;

(2) “Aquifer water” means water removed from the Sparta Aquifer;

(3) “Commission” means the Arkansas Natural Resources Commission;

(4) “Conservation fee” means any fee fixed pursuant to this subchapter and levied upon any registered water user or significant water user;

(5) “Construct” means to construct, equip, install, or to otherwise develop by any means selected by a board;

(6) “County” means any Arkansas county:

(A) In which at least ninety percent (90%) of the reported groundwater usage from the Sparta Aquifer is for municipal and industrial purposes as of July 1, 2005; and

(B) Which has been or is found and determined by the commission to be within a critical groundwater area prior to July 1, 2005, within the meaning of the Arkansas Groundwater Protection and Management Act, § 15-22-901 et seq.;

(7) “Improvement plan” means a plan to carry out the construction and acquisition of water facilities or to provide for the conservation of aquifer water, or both;

(8) “Major water user” means any person that during any month of the year, averages withdrawal from the Sparta Aquifer of one million (1,000,000) or more gallons of aquifer water per day;

(9) “Person” means any natural person, firm, association, corporation, trust, partnership, governmental agency, state or political subdivision, county, municipality, or other legal entity;

(10)(A) “Registered water user” means any person that, whether as an owner, lessee, operator, or otherwise, including a board, operates one (1) or more wells with a minimum potential flow rate of fifty

thousand gallons (50,000 gals.) or more of aquifer water per day and is required to register with the commission under § 15-22-302.

(B) The withdrawal of water which is expected to be returned to an aquifer by the user does not cause a person to be a registered water user;

(11) "Revenues" means revenues derived from any source, including, without limitation, the wholesale or retail sale of water and the conservation fees;

(12) "Significant water user" means any person that, whether as owner, lessee, operator, or otherwise, including a board, operates one (1) or more wells with a maximum flow rate of less than fifty thousand gallons (50,000 gals.) of aquifer water per day and is determined by the board to be using aquifer water for other than domestic purposes;

(13) "Sparta Aquifer critical groundwater county conservation board" or "board" means any Sparta Aquifer critical groundwater conservation county board established pursuant to this subchapter; and

(14) "Water facilities" means any facilities for the withdrawal, storage, transportation, treatment, or distribution of water, together with any properties, real, personal, or mixed, tangible or intangible, related or appropriate thereto.

History. Acts 1999, No. 1050, § 3; date of the petition" in (6)(A); substituted 2005, No. 1774, § 2. "July 1, 2005" for "July 1, 1998" in (6)(B);

Amendments. The 2005 amendment inserted present (8); and redesignated substituted "as of July 1, 2005" for "on the former (8)-(13) present (9)-(14).

15-22-1204. Construction and enumeration.

(a) This subchapter is complete in itself and shall be the sole authority necessary to carry out its purposes.

(b) This subchapter shall be construed liberally.

(c) The enumeration of any object, purpose, power, or method shall not be deemed to exclude like objects, purposes, powers, or methods.

History. Acts 1999, No. 1050, § 4.

15-22-1205. Sparta Aquifer critical groundwater county conservation boards.

(a) One hundred (100) or more qualified electors residing within any county may petition the circuit court for the county to establish a Sparta Aquifer critical groundwater county conservation board for the purposes set forth in this subchapter.

(b) A petition filed pursuant to this subchapter shall contain:

(1) A brief and concise statement describing the water crisis affecting the county;

(2) A brief and concise statement showing the necessity for forming and operating the proposed board and describing the benefits to be derived from it by the residents and property owners in the county;

(3) The proposed name for the board;

(4) A proposed improvement plan; and

(5) Any other and additional information as may be appropriate and useful, including, without limitation, the proposed names of initial members and their terms.

History. Acts 1999, No. 1050, § 5.

15-22-1206. Petition — Commission report.

(a) Upon the filing of the petition in the office of the circuit clerk, the clerk shall prepare a certified copy of the petition and transmit the certified copy to the Arkansas Natural Resources Commission within five (5) days after the date of the filing of the petition.

(b)(1) Upon receipt of the certified copy, the commission, if it has not already done so, shall begin an investigation of the present and future availability of aquifer water for the county.

(2) The commission shall transmit within sixty (60) days after receipt of the certified copy of the petition a written report of its findings to the clerk of the circuit court.

(c) The report of the commission shall include, but need not be limited to:

(1) A finding as to whether the water shortage of the county, if any, is such that it conforms to the definition of "county" in § 15-22-1203(6);

(2) A finding as to whether the organization of the proposed Sparta Aquifer critical groundwater county conservation board serves to alleviate any such water shortage and would be conducive to the purposes of this subchapter;

(3) A finding that an existing plan is in place, including deadlines for progress, which is reasonably calculated to alleviate the depletion of the Sparta Aquifer and reduce the withdrawal of aquifer water to levels below the safe yield in order to protect the Sparta Aquifer for future use;

(4) A finding that the proposed improvement plan, if implemented, would or would not preserve the groundwater resource for future use; and

(5) Any conditions or recommendations which the commission regards as necessary to the organization of the board and the purposes and powers of the board.

(d)(1) If the commission makes a finding that an existing plan is in place to preserve the actual groundwater use under subdivision (c)(3) of this section, then the petition shall be held in abeyance, and the commission shall continuously monitor the plan's progress.

(2) However, upon the petition of any twenty (20) persons alleging insufficient progress in the plan, the commission shall conduct a hearing in the county and examine the previous findings.

History. Acts 1999, No. 1050, § 6.

15-22-1207. Court order — Notice and hearing.

(a) Within thirty (30) days after the report of the Arkansas Natural Resources Commission has been filed in the office of the circuit clerk, the petition shall be presented to the judge of the circuit court, either in term or vacation, and the court shall enter its order:

(1) Setting a hearing upon the petition for a day certain; and

(2) Directing the clerk of the court to give notice of the hearing by publication for two (2) consecutive weeks in a newspaper or newspapers having a general circulation in the county.

(b) The notice shall contain:

(1) A concise statement describing the purpose of the hearing;

(2) A concise statement of the findings and conclusions of the commission; and

(3) A warning to all persons residing or owning property within the county to appear upon the date and at the time and place of the hearing to show cause, if any exists, why the petition should not be granted.

(c) Upon the date and at the time and place named in the notice, the circuit court shall meet and hear all persons who wish to appear and advocate or resist the establishment of the board.

(d) If the court, after being satisfied as to the sufficiency of the petition and the proceedings thereon, finds it to be in the best interests of the persons residing or owning land within the county that the board should be established under the terms of this subchapter, the court shall enter its order establishing the board, subject to the terms and provisions of this subchapter, and designating a name for the board.

History. Acts 1999, No. 1050, § 7.

15-22-1208. County conservation board members.

(a) The Sparta Aquifer critical groundwater county conservation board shall be composed of one (1) qualified elector residing in each justice of the peace district in the county.

(b)(1) The initial members of the board shall be appointed by the circuit court at the time of establishment of the board or within a reasonable time thereafter.

(2) The court shall fix the terms of the initial members of the board in a manner that the terms of the board members shall expire on December 31 of the year of each general election and each two (2) years thereafter.

(3) The membership of the initial board shall be divided into two-year, four-year, and six-year terms in order to set up the every-two-year rotation.

History. Acts 1999, No. 1050, § 8.

15-22-1209. Additional county conservation board members.

(a) Other than the initial members of the Sparta Aquifer critical groundwater county conservation board, members of the board shall be elected to terms of six (6) years by the qualified electors residing in the respective justice of the peace districts included in the county.

(b)(1) Nominations for members of the board shall be upon petitions signed by at least ten (10) qualified electors residing in the justice of the peace district from which the member is to be elected.

(2) The petition shall be filed with the county board of election commissioners at least sixty (60) days prior to the general election.

(c) Election of members shall be held as a part of the general election and under the laws governing the general election.

(d) Any member shall be qualified to succeed himself or herself.

(e) Any member of the board shall serve until his or her successor is elected and qualified.

(f) In the event of an increase or decrease in the number of justice of the peace districts in a county, the circuit court, upon petition signed and filed with the circuit clerk by twenty (20) or more qualified electors residing in the county, shall enter its order making appropriate modifications in the composition of the board.

History. Acts 1999, No. 1050, § 9.

15-22-1210. Oath of office — Vacancy.

(a) Each member of the Sparta Aquifer critical groundwater county conservation board shall take the oath of office required by Arkansas Constitution, Article 19, § 20, and shall also swear that he or she will not directly or indirectly be interested in any contract made by the board.

(b) All oaths of members of the board shall be executed in writing and shall be filed in the office of the circuit clerk for the county.

(c) Any member failing to take the oath within thirty (30) days after his or her appointment or election shall be deemed to have declined the office, and his or her place shall be filled as other vacancies.

(d)(1) Any vacancy on the board shall be filled by appointment of the board for a term to last until December 31 following the next general election, at which time the vacancy shall be filled by election from the appropriate district for the unexpired term of the position that became vacant.

(2) Should there not be time for a candidate to qualify for the next general election, the appointment shall be until December 31 of the next-following general election.

History. Acts 1999, No. 1050, § 10.

15-22-1211. Compensation — Liability — Meetings.

(a) The members of the Sparta Aquifer critical groundwater county conservation board shall receive no compensation but shall be entitled to reimbursement for out-of-pocket expenses by the procedure and in the amounts provided for employees of the State of Arkansas under § 25-16-902.

(b) Members of the board shall be immune from liability for acts and omissions within the scope of their duties as board members, except in cases of gross negligence or wanton misconduct.

(c) Boards shall be authorized to acquire liability insurance for the benefit and protection of the members of the board and, except in cases of gross negligence or wanton misconduct, to reimburse members of the board in the event of liability.

(d) Promptly upon their appointment, the members of the board shall meet and organize and shall elect a president, vice president, and secretary-treasurer and shall adopt bylaws which shall govern their proceedings.

(e)(1) Regular meetings of the board shall be held not less frequently than quarterly, as determined by the board, at the office of the board.

(2) All meetings are subject to the open meetings and public meetings requirements of the Arkansas Freedom of Information Act of 1967, § 25-19-101 et seq.

(f)(1) Special meetings of the board may be held at any time upon waiver of notice by all members or may be called by the president or by any two (2) members at any time, provided that notice signed by the person or persons calling any special meeting shall be mailed to each member of the board at least seven (7) days prior to the time fixed for the special meeting.

(2) Emergency special meetings of the board may be held on the call of the president or vice president in the president's absence, provided a written notice is delivered by a member of the board or a designated agent whose name is set out in the notice to each member of the board at least three (3) working days prior to the time fixed for the emergency special meeting.

(g)(1) A majority of the members of the board shall constitute a quorum for the transaction of business.

(2) In the absence of any of the elected officers of the board, a quorum at any meeting may select a member to act as presiding officer.

History. Acts 1999, No. 1050, § 11.

15-22-1212. Powers of county conservation board.

(a) Each Sparta Aquifer critical groundwater county conservation board shall have the power to:

(1) Sue and be sued and complain and defend in the name of the board;

(2) Adopt a seal which may be altered at the board's pleasure and use it as the board determines;

(3) Acquire, construct, and develop any water facilities;

(4) Withdraw, store, transport, treat, and distribute water and engage in activities related or appropriate thereto;

(5) Acquire, own, lease, and operate any lands, buildings, fixtures, equipment, personalty, and other properties, real, personal, or mixed, tangible or intangible, as may be appropriate to its powers and the purposes of this subchapter;

(6)(A) Sell and issue bonds secured by and payable from its revenues and enter into such trust indentures and other documents and undertakings as may be appropriate thereto. The bonds shall be payable over a period of not more than forty (40) years and shall bear interest at an interest rate or rates not to exceed that set forth in Arkansas Constitution, Amendment 65.

(B) The bonds shall be sold for such price and by such method as shall be determined by the board, and the bonds and interest thereon shall be exempt from all state, county, and municipal taxes;

(7) Apply the proceeds of revenue bonds and sales and use tax bonds issued by the county and municipalities within the county for the acquisition, construction, and development of water facilities, as may be agreed to by the county and such municipalities;

(8) Have and exercise the power of eminent domain for the purpose of acquiring lands, rights-of-way, and other properties necessary in the construction or operation of any water facilities in the manner now provided by the condemnation laws of this state for acquiring private property for public use;

(9) Accept gifts or grants of money, services, franchises, rights, privileges, licenses, rights-of-way, easements, or other property, real, personal, or mixed, tangible or intangible;

(10) Make any and all contracts necessary or convenient for the exercise of the powers granted in this subchapter, including, without limitation, contracts with other boards and with municipalities and counties;

(11) Fix, regulate, and collect rates, fees, rents, and other charges for water sold by the board and for the use of water facilities and for services furnished by the board, any such rates to be just, reasonable, and nondiscriminatory;

(12) Conduct its affairs within and without this state;

(13) Elect, appoint, or employ officers, agents, attorneys, engineers, and such other personnel as it shall deem necessary and to fix their compensation and to establish the use and application of the board's revenues;

(14) Enter upon private premises for the purpose of carrying out the terms of this subchapter, including a determination of the capacity of the Sparta well, and for compliance with the Department of Health rules and regulations concerning the health and safety of the water systems;

(15) Accept appropriations and grants from the State of Arkansas and from the United States upon such terms and conditions as may be imposed by law or regulation;

(16) Require that anyone drilling a water well into the Sparta Aquifer designated critical by the Arkansas Natural Resources Commission shall file a copy of the report required to be filed with the Commission on Water Well Construction pursuant to § 17-50-104 with the board;

(17) Require monitoring of all wells determined to be operated as registered water users or significant water users; and

(18) Exercise all powers necessary and appropriate to accomplish the improvement plan and such other powers as may be set forth in this subchapter or as may be necessary or appropriate to carry out its purposes and the purpose of this subchapter.

(b) Notwithstanding the powers conferred by this section, a board shall comply with the laws of this state regarding the acquisition, storage, transportation, distribution, treatment, or disposal of water.

(c) The board shall have the power, pursuant to appropriate agreement, to expend and invest the proceeds of bonds and other obligations, whether secured by revenues or taxes or otherwise, issued by the county or by any municipality in the county.

History. Acts 1999, No. 1050, § 12.

15-22-1213. Annual financial audit and report.

(a) Each Sparta Aquifer critical groundwater county conservation board shall procure an annual financial audit to be conducted following each board's fiscal year end.

(b) Each board shall choose and employ accountants licensed and in good standing with the Arkansas State Board of Public Accountancy to conduct these audits in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

(c)(1) Each audit report and accompanying comments and recommendations shall be reviewed by the board and copies of each audit report shall be filed with the Arkansas Natural Resources Commission and the Division of Legislative Audit.

(2) In addition, one (1) copy of the audit report shall be kept for public inspection with the books and records of the board, and one (1) copy shall be filed with the clerk of the circuit court where the petition was filed to create the board.

History. Acts 1999, No. 1050, § 13.

15-22-1214. Water conservation levy.

(a) The Sparta Aquifer critical groundwater county conservation board may levy and fix upon each registered water user and significant water user of aquifer water a conservation fee in an amount deemed

appropriate by the board to discourage the withdrawal of aquifer water by registered water users and significant water users.

(b) However, when the board has extended an alternate water source to the property line of a major water user and the major water user does not connect to and begin using the alternate water source, the major water user may be assessed a conservation fee determined by the board, not to exceed ninety-six cents (96¢) per one thousand gallons (1000 gals.) of aquifer water withdrawn, until the major water user connects to and uses the alternate water source.

History. Acts 1999, No. 1050, § 14; 2005, No. 1774, § 3.

Amendments. The 2005 amendment rewrote this section.

15-22-1215. Monthly conservation fee.

(a)(1) Each registered and significant water user shall report monthly on or before the fifteenth day of the month to the Arkansas Natural Resources Commission and to the Sparta Aquifer critical groundwater county conservation board on a form or forms prescribed by the commission the quantity of aquifer water which it withdrew during the preceding month on a well-by-well basis.

(2) The board shall set the date on which the conservation fee shall go into effect.

(b)(1) Any conservation fee shall be payable each month, with the report provided for in subsection (a) of this section, to the county treasurer of the county.

(2) Conservation fees shall be remitted to the board by the county treasurer after deduction of an amount equal to one-quarter of one percent (0.25%) thereof for payment or reimbursement of administrative expenses, on or before the first day of the month following the month in which the fees were received.

(c) All proceeds of the conservation fee shall be applied to defray the costs of the board for operation and maintenance of and debt service in relation to the improvement plan, including, but not limited to, the water facilities and to serve the purposes of this subchapter.

(d) Any conservation fees which are determined to be delinquent for more than ninety (90) days shall constitute a lien on the real and personal property of each delinquent registered and significant water user and may be enforced against that property by an action in circuit court.

History. Acts 1999, No. 1050, § 15.

15-22-1216. Meter required.

(a)(1) Each registered water user shall install and maintain a meter at its expense in conformance with the standards and specifications issued by the Arkansas Natural Resources Commission for the purpose of measuring and recording the quantity of aquifer water drawn by the registered water user.

(2) Each significant water user shall maintain at its expense a meter purchased and installed by the Sparta Aquifer critical groundwater county conservation board.

(b) Each meter shall be accessible to agents of the commission and the board during reasonable business hours.

History. Acts 1999, No. 1050, § 16.

15-22-1217. Violation — Penalty.

(a) Any registered water user or significant water user who shall fail to report as set forth in § 15-22-1215 shall be subject to an administrative penalty at the rate of two (2) times the conservation fee owed, payable to the Sparta Aquifer critical groundwater county conservation board.

(b) Any person who intentionally or willfully makes any false report under the provisions of this subchapter or who tampers with any meter required by this subchapter shall be guilty of a misdemeanor and upon conviction shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000).

History. Acts 1999, No. 1050, § 17.

15-22-1218. Rules and regulations.

The Arkansas Natural Resources Commission and each Sparta Aquifer critical groundwater county conservation board are authorized to issue rules and regulations and to conduct investigations for the purpose of implementing and carrying out the terms of this subchapter.

History. Acts 1999, No. 1050, § 19.

SUBCHAPTER 13 — REVENUE BONDS FOR WATER RESOURCES

SECTION.

- 15-22-1301. Water resources — Bonds.
- 15-22-1302. Legal counsel — Underwriter.
- 15-22-1303. Tax exempt status of bonds — Investment in bonds.
- 15-22-1304. Gubernatorial approval.
- 15-22-1305. Bonds — Form — Terms.
- 15-22-1306. Bonds — Sales.
- 15-22-1307. Bonds — Signature — Seal.
- 15-22-1308. Bonds — Issuance — Payment.

SECTION.

- 15-22-1309. Bonds — Effective date of lien of pledge.
- 15-22-1310. Bonds — Refunding.
- 15-22-1311. Bonds — Security for public funds.
- 15-22-1312. Immunity — Commissioners and officers.
- 15-22-1313. Withholding general revenue turnback.

15-22-1301. Water resources — Bonds.

The Arkansas Natural Resources Commission may issue revenue bonds from time to time whether or not the interest on the bonds is subject to federal income taxation to provide:

- (1) Funds for the:

- (A) Construction Assistance Revolving Loan Fund established by § 15-5-901;
- (B) Safe Drinking Water Fund established by § 15-22-1102;
- (C) Arkansas Water Development Fund established by § 15-22-507;
- (D) Water, Sewer, and Solid Waste Systems Revolving Fund established by § 19-5-310; and
- (E) Arkansas Water Resources Cost Share Revolving Fund established by § 15-22-808; and
- (2) Financing all or a portion of the costs of:
 - (A) Water systems;
 - (B) Wastewater systems;
 - (C) Solid and hazardous waste facilities;
 - (D) Recycling facilities;
 - (E) Nonpoint source pollution management programs;
 - (F) Wetland conservation and management plans;
 - (G) Irrigation systems;
 - (H) Flood control and drainage systems;
 - (I) Water conservation projects and facilities;
 - (J) Navigation systems, including port facilities;
 - (K) Land and water reclamation projects; and
 - (L) Other environmental or water development projects.

History. Acts 2003, No. 598, § 1.

15-22-1302. Legal counsel — Underwriter.

The Arkansas Natural Resources Commission may engage legal counsel and an underwriter or underwriters to facilitate the issuance and sale of bonds to be issued under this subchapter.

History. Acts 2003, No. 598, § 1.

15-22-1303. Tax exempt status of bonds — Investment in bonds.

(a) Any bonds issued under this subchapter and the interest paid on the bonds shall be exempt from all state, county, and municipal taxes, and the exemption shall include income, inheritance, and property taxes.

(b)(1) Any municipality, board, commission, or other authority established by ordinance of any municipality or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality or the board of trustees of any retirement system created by the General Assembly, in its discretion, may invest any of its funds not immediately needed for its purposes in bonds issued under this subchapter.

(2) Bonds issued under this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 2003, No. 598, § 1.

15-22-1304. Gubernatorial approval.

(a) When gubernatorial approval is required by the provisions of the Internal Revenue Code of 1986, as amended, or any other federal or state law, the Governor may approve the issuance of bonds by the Arkansas Natural Resources Commission upon receipt of written request for approval from the Executive Director of the Arkansas Natural Resources Commission.

(b) The written request shall state that the commission has conducted a public hearing pursuant to appropriate public notice concerning the purposes for which the bonds are to be issued.

(c) The written request shall also summarize the comments made and questions posed at the public hearing.

History. Acts 2003, No. 598, § 1.

codified throughout Title 26 of the U.S.

U.S. Code. The Internal Revenue Code of 1986, referred to in subsection (a), is

Code.

15-22-1305. Bonds — Form — Terms.

(a)(1) The Arkansas Natural Resources Commission shall authorize by resolution the issuance of bonds under this subchapter.

(2) The commission shall determine with regard to the bonds:

(A) Form and denominations;

(B) Date or dates;

(C) Time of maturation;

(D) Interest, including:

(i) Times payable;

(ii) Places within or without the state; and

(iii) Rate or rates;

(E) Terms and prices of redemption in advance of maturity; and

(F) Terms and conditions.

(3) The bonds shall be denominated in the currency of the United States.

(4) The bonds shall have all the qualities of and shall be deemed to be negotiable instruments under the laws of the state, subject to provisions as to registration.

(5) The authorizing resolution may contain any other terms, covenants, and conditions that the commission deems reasonable and desirable, including, without limitation, those pertaining to the:

(A) Maintenance of various funds and reserves;

(B) Nature and extent of any security for payment of the bonds;

(C) Custody and application of proceeds of the bonds;

(D) Collection and disposition of revenues;

(E) Investing for authorized purposes; and

(F) Rights, duties, and obligations of the commission and the holders and registered owners of the bonds.

(b)(1) The authorizing resolution may provide for the execution of a trust indenture between the commission and any financial institution within or without the state.

(2) The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the commission, including, without limitation, those pertaining to the:

- (A) Maintenance of various funds and reserves;
- (B) Nature and extent of any security for the payment of the bonds;
- (C) Custody and application of proceeds of the bonds;
- (D) Collection and disposition of revenues;
- (E) Investing and reinvesting of any moneys during periods not needed for authorized purposes; and
- (F) Rights, duties, and obligations of the commission and the holders and registered owners of the bonds.

(c)(1) Any authorizing resolution and trust indenture relating to the issuance and security of the bonds shall constitute a contract between the commission and registered owners of the bonds.

(2)(A) The contract and all covenants, agreements, and obligations therein shall be promptly performed in strict compliance with the terms and provisions of the contract.

(B) The covenants, agreements, and obligations of the commission may be enforced by mandamus or other appropriate proceeding at law or in equity.

History. Acts 2003, No. 598, § 1.

15-22-1306. Bonds — Sales.

(a) The bonds may be sold in a manner, either at public or private sale, and upon terms that the Arkansas Natural Resources Commission shall determine to be reasonable and expedient for effectuating the purposes for which the bonds are issued.

(b) The bonds may be sold at a price the commission may accept, including sale at discount.

History. Acts 2003, No. 598, § 1.

15-22-1307. Bonds — Signature — Seal.

(a) The bonds shall be executed by manual or facsimile signature of the Chair of the Arkansas Natural Resources Commission and the manual or facsimile signature of the Executive Director of the Arkansas Natural Resources Commission or any other director or officer authorized to do so by resolution of the commission.

(b) If the officers whose signatures appear on the bonds shall cease to be officers before delivery of the bonds, their signatures, nevertheless, shall be valid and sufficient for all purposes.

(c) Each bond shall be impressed or imprinted with the seal of the commission.

History. Acts 2003, No. 598, § 1.

15-22-1308. Bonds — Issuance — Payment.

- (a) The face of each bond shall plainly state that the bond:
 - (1) Has been issued under this subchapter;
 - (2) Is an obligation only of the Arkansas Natural Resources Commission; and
 - (3) Does not constitute:
 - (A) An indebtedness of the state;
 - (B) An indebtedness for which the faith and credit of the state or any of its revenues are pledged; or
 - (C) An indebtedness secured by a lien on or a security interest in any property of the state.
 - (b) The payment of the principal of, redemption premium, if any, and interest on and the trustee's and paying agent's fees in connection with the bonds may be secured by a lien on:
 - (1) All or any part of the:
 - (A) Construction Assistance Revolving Loan Fund;
 - (B) Safe Drinking Water Fund;
 - (C) Arkansas Water Development Fund;
 - (D) Water, Sewer, and Solid Waste Systems Revolving Fund; or
 - (E) Arkansas Water Resources Cost Share Revolving Fund; or
 - (2) A pledge of:
 - (A) Bonds, notes, or other evidences of indebtedness owned or acquired by the commission and the commission's interest in any revenue derived from the bonds, notes, or other evidences of indebtedness; or
 - (B) Any collateral security held or received by the commission, including, without limitation, facilities or projects financed with proceeds of the commission's bonds.
 - (c) It shall not be necessary to the perfection of the lien and pledge for those purposes that the trustee in connection with the bond issue or the registered owners of the bonds take possession of the bonds, notes, or other evidences of indebtedness or collateral security.

History. Acts 2003, No. 598, § 1.

15-22-1309. Bonds — Effective date of lien of pledge.

- (a)(1) Any pledge of revenues, moneys, funds, or other property made by the Arkansas Natural Resources Commission shall be valid and binding from the time the pledge is made.
- (2) The revenues, moneys, funds, or other property so pledged and received by the commission shall immediately be subject to the lien of the pledge without physical delivery of the revenues, moneys, funds, or other property pledged and received by the commission or further act on the part of the commission.
- (3) The lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against

the commission, irrespective of whether the parties have notice of the lien of the pledge.

(b) Neither the authorizing resolution nor any other instrument by which a pledge is created need be filed or recorded except in the records of the commission.

History. Acts 2003, No. 598, § 1.

15-22-1310. Bonds — Refunding.

(a) Bonds may be issued for the purpose of refunding either at maturity or in advance of maturity any bonds issued under this subchapter or any bonds issued by the Arkansas Development Finance Authority to finance the Construction Assistance Revolving Loan Fund or the Safe Drinking Water Fund.

(b) The refunding bonds may either be sold or delivered in exchange for the bonds being refunded.

(c) If sold, proceeds of the bonds may either be applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement of the bonds being refunded as specified by the Arkansas Natural Resources Commission and the authorizing resolution or trust indenture securing the refunding bonds.

(d) The authorizing resolution or trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same security for their payment as provided for the bonds being refunded.

(e) Refunding bonds shall be sold and secured in accordance with the provisions of this subchapter pertaining to the sale and security of bonds.

History. Acts 2003, No. 598, § 1.

15-22-1311. Bonds — Security for public funds.

Bonds issued under this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 2003, No. 598, § 1.

15-22-1312. Immunity — Commissioners and officers.

No commissioner or officer of the Arkansas Natural Resources Commission shall be liable personally for any reason arising from the issuance of bonds under this subchapter unless he or she has acted with a corrupt intent.

History. Acts 2003, No. 598, § 1.

15-22-1313. Withholding general revenue turnback.

(a) Should any city, town, county, or political subdivision receiving general revenue turnback funds as defined in the Revenue Stabilization Law, § 19-5-101 et seq., fail, neglect, or refuse to pay any installment of principal, interest, or financing fee for a period of more than ninety (90) days past the due date in accordance with the written instrument for the repayment of its bonds, notes, or other evidences of indebtedness purchased by the Arkansas Natural Resources Commission with proceeds of the commission's bonds issued under this subchapter, after notification to the city, town, county, or political subdivision, the commission may certify to the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State the:

- (1) Name of the city, town, county, or political subdivision; and
- (2) Amount of deficiencies ninety (90) days or more past due.

(b) Upon certification, the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State are directed to withhold from the city's, town's, county's, or other political subdivision's share of general revenue turnback as the share is defined in the Revenue Stabilization Law, § 19-5-101 et seq., the amount so certified as due the commission and to transfer the amount as directed by the commission for use as provided by law.

History. Acts 2003, No. 598, § 1; 2005, No. 1962, § 68. ing "may certify," and inserted the (1) and (2) designations and made related changes.

Amendments. The 2005 amendment, in (a), inserted "the commission" preceded-

CHAPTER 23

RIVERS AND CREEKS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS WATERWAYS COMMISSION.
3. ARKANSAS NATURAL AND SCENIC RIVERS SYSTEM ACT.
4. ARKANSAS RIVER BASIN COMPACT.
5. RED RIVER COMPACT.
6. WHITE RIVER VALLEY COMMISSION. [REPEALED.]
7. BUFFALO NATIONAL RIVER COMMISSION. [REPEALED.]
8. OUACHITA RIVER COMMISSION.
9. ARKANSAS PORT PRIORITY IMPROVEMENT PROGRAM ACT.

RESEARCH REFERENCES

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| <p>Ark. L. Rev. Lex Aquae Arkansas, 27 Ark. L. Rev. 429.</p> <p>Land Use — Wetlands Regulations, 27 Ark. L. Rev. 527.</p> <p>U. Ark. Little Rock L.J. Trelease, A</p> | <p>Water Management Law for Arkansas, 6 U. Ark. Little Rock L.J. 369.</p> <p>Comment, Arkansas at the Water Crossroads: Regulations or Solutions?, 7 U. Ark. Little Rock L.J. 401.</p> |
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SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

15-23-101. Cache River declared non-navigable.

15-23-102. Mulberry River.

15-23-103. Lee Creek development.

SECTION.

15-23-104. Kings River.

15-23-105. Eleven Point River.

15-23-106. Point Remove Creek Development Authorization Act.

A.C.R.C. Notes. References to "this subchapter" in §§ 15-23-101 — 15-23-104 may not apply to §§ 15-23-105 and 15-23-106 which were enacted subsequently.

Cross References. Water power, § 23-18-401 et seq.

Preambles. Acts 1917, No. 406 contained a preamble which read: "Whereas, by the terms of the Act of Congress of the United States, of the session of 1916, entitled, 'An act making appropriations for the construction, repair and preservation of certain public works on rivers and harbors, and for other purposes' it was provided: 'That the Cache river in the State of Arkansas be and the same is hereby, declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. This provision shall become void after one year from the date of the approval of this act unless within said period the Legislature of Arkansas shall pass an act expressly approving this declaration. The right of the Congress to alter, amend, or repeal this paragraph is hereby expressly provided'; and

"Whereas, said Cache river is not, in point of fact, navigable, and the necessity of making the bridges thereover drawbridges greatly restricts the development of the country bordering upon said Cache river;

"Now, therefore...."

Effective Dates. Acts 1917, No. 406, § 2: approved Mar. 28, 1917. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared, and this Act shall take effect and be in force from and after its passage."

Acts 1971, No. 319, § 7: Mar. 17, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the portion of Kings River located in Madison County possesses unique scenic, recreational, and other characteristics in a natural, unpolluted and wild state, and is one of the few remaining natural attractions and resources of this state which is still preserved in its natural and wild state, and that the immediate enactment hereof is necessary to establish reasonable regulations for the preservation of said stream and to prevent pollution thereof. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 263, § 5: Mar. 5, 1985. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the immediate development of Lee Creek by impounding water above the 3.2 mile point is necessary to the health and welfare of the people of the State of Arkansas; that legislative authorization is necessary to the lawful development of Lee Creek; and that immediate implementation of this Act is a necessary and proper means of obtaining authority for the Lee Creek development. Therefore, an emergency is declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect immediately upon its passage and approval."

15-23-101. Cache River declared nonnavigable.

The General Assembly approves the declaration of Congress in declaring the Cache River to be nonnavigable.

History. Acts 1917, No. 406, § 1, p. 1884; C. & M. Dig., § 7759; Pope's Dig., § 10151; A.S.A. 1947, § 21-101.

U.S. Code. The declaration of Congress referred to in this section is codified as 33 U.S.C. § 25.

CASE NOTES

Constitutionality.

The act referred to in this section was not invalid even though it prohibited the floating of logs, and floating was the only

method of moving logs. Central Clay Drainage Dist. v. Booser, 143 Ark. 18, 219 S.W. 336 (1920).

15-23-102. Mulberry River.

(a)(1) The Mulberry River, from confluence with the Arkansas River, Section 12, Township 9 North, Range 29 West, upstream to headwaters west of Salus, North Line of Section 32, Township 13 North, Range 23 West, is declared to be a scenic river of the State of Arkansas.

(2) It shall be unlawful to construct a permanent dam that would impound waters in the principal bed of the segment of the Mulberry River described in this subsection.

(b) The Arkansas Natural and Scenic Rivers System Act, § 15-23-301 et seq. shall not apply to the Mulberry River.

History. Acts 1985, No. 1086, §§ 1, 2.

15-23-103. Lee Creek development.

(a) This section shall be known and may be cited as the "Lee Creek Development Authorization Act of 1985".

(b)(1) Authority is granted to develop that portion of the Lee Creek Waterway located in Crawford County, commencing at the three and two-tenths-mile point of Lee Creek, measured from the point of confluence of Lee Creek and the Arkansas River, and continuing from the three and two-tenths-mile point to the common boundary between the states of Arkansas and Oklahoma.

(2)(A) The grant of authority for development as set forth in this subsection includes, but is not limited to, the authority to construct any bridge, causeway, dam, dike, or other structure necessary to the development of the designated portion of Lee Creek and the impoundment of water thereon.

(B) However, the appropriate permits for the construction of such structures are obtained from the responsible agencies of the State of Arkansas as otherwise provided by law.

(c) Those portions of Lee Creek affected by subsection (b) of this section are found to be solely within the State of Arkansas.

History. Acts 1985, No. 263, §§ 1-3; A.S.A. 1947, § 21-1317n.

15-23-104. Kings River.

(a) The General Assembly finds that the portion of Kings River located in Madison County possesses unique and outstanding scenic, recreational, botanical, geological, historical, piscine, faunal, and other outdoor values of great present and potential benefit to the people of the State of Arkansas, and the preservation of its wild, unpolluted, and natural state is essential for this and future generations.

(b)(1) Nothing in this section shall affect the jurisdictions or responsibilities of state agencies or political subdivisions of the State of Arkansas in the enforcement of laws with respect to water, fish, and wildlife and other related resources.

(2) Nor shall the provisions of this subchapter be deemed to in any way impair or interfere with the continuation of the present agricultural uses of lands along the Kings River, including the raising of crops and the grazing of livestock.

(c) In furtherance of the purposes set forth in subsection (a) of this section, it shall be unlawful for:

(1)(A) Any person, firm, or corporation to construct any permanent dam or other structure that would impound waters of the principal bed of the Kings River.

(B) The establishment of a water gap essential for farming operations shall not be deemed a dam obstruction of the flow of the stream unless it results in an impoundment of the waters of the Kings River;

(2) Any business or industry located on or near the Kings River to engage in any dumping or drainage or to permit any seepage into the Kings River that would affect the quality of the waters of the Kings River in violation of any regulation of the Arkansas Pollution Control and Ecology Commission;

(3) Any person, firm, or corporation to establish any platted subdivision within fifty feet (50') of the normal bank of the Kings River; and

(4) Any person, firm, or corporation to construct any nonfarm building or other structure within fifty feet (50') of the normal bank of the Kings River.

History. Acts 1971, No. 319, §§ 1, 2, 4;
A.S.A. 1947, §§ 82-1910, 82-1911,
82-1913.

15-23-105. Eleven Point River.

(a) The Eightieth General Assembly finds that the portion of Eleven Point River located in Randolph County, from its confluence with the Spring River at the Randolph County and Lawrence County line north upstream to the Missouri line, possesses unique and outstanding scenic, recreational, botanical, faunal, and other outdoor values of vital interest and present and potential benefit to the people of the State of Arkansas and the preservation of its unpolluted and natural state is essential for this and future generations.

(b)(1) In furtherance of the purposes set forth in subsection (a) of this section, it shall be unlawful for any motorboat equipped with an engine greater than thirty horsepower (30 hp) at the propeller to operate or navigate on the Eleven Point River from its confluence with the Spring River at the Randolph County and Lawrence County line north upstream to the Missouri line.

(2) As used in this section, the term “motorboat” shall have the same meaning as the term is defined in § 27-101-103(5).

(c)(1) Nothing in this section shall affect the jurisdictions or responsibilities of state agencies or political subdivisions of the State of Arkansas in the enforcement of laws with respect to water, fish, and wildlife and other related resources.

(2) This section is intended to be supplementary and in addition to all other Arkansas laws regulating the use of waterways, motorboats, and natural scenic rivers.

History. Acts 1995, No. 1077, § 2; 2007, No. 202, § 1.

A.C.R.C. Notes. As enacted by Acts 1995, No. 1077, § 2, subdivision (b)(1) began: “In furtherance of the purposes set forth in subsection (a) of this section, from and after the effective date of this act [July 28, 1995].”

References to “this subchapter” in

§§ 15-23-101 — 15-23-104 may not apply to this section which was enacted subsequently.

Amendments. The 2007 amendment substituted “an engine greater than thirty horsepower (30 hp) at the propeller” for “a greater than twenty-five horsepower (25 hp) engine” in (b)(1).

15-23-106. Point Remove Creek Development Authorization Act.

(a) This section shall be known as the “Point Remove Creek Development Authorization Act”.

(b)(1) Authority is granted to develop that portion of the Point Remove Creek Waterway located at the Old Stagecoach Low Water Crossing of Point Remove Creek at the nine and three-tenths-mile point and is in the fractional Northwest Quarter of the Southwest Quarter of Section Fifteen (15), Township Six (6) North, Range Seventeen (17) West.

(2)(A) The grant of authority for development as set forth in this subsection includes, but is not limited to, the authority to construct any bridge, causeway, dam, dike, or other structure necessary to the development of the designated portion of Point Remove Creek and the impoundment of water thereon.

(B) However, the appropriate permits for the construction of such structures must be obtained from the responsible agencies of the State of Arkansas as otherwise provided by law.

(c) Those portions of Point Remove Creek affected by subsection (b) of this section are found to be solely within the State of Arkansas.

History. Acts 1997, No. 1209, § 1.

A.C.R.C. Notes. References to “this subchapter” in §§ 15-23-101 — 15-23-104

may not apply to this section which was enacted subsequently.

SUBCHAPTER 2 — ARKANSAS WATERWAYS COMMISSION

SECTION.

15-23-201. Establishment — Members.

15-23-202. Duties.

SECTION.

15-23-203. Employees.

15-23-204. Report.

Effective Dates. Acts 1973, No. 414, § 2: became law without Governor's signature, Mar. 21, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to the Waterways Commission are somewhat vague and in need of immediate clarification in order to further the development of water transportation in this state and that this act will accomplish this purpose. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1975 (Extended Sess., 1976), No. 1035, § 3: Jan. 27, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in Extended Session, that the standardization of mileage reimbursement for members of the state's Boards and Commissions will alleviate many discrepancies and inequities in existing laws and will allow such members to receive travel reimbursement commensurate with that paid to state employees. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 102, § 8: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision

of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1987, No. 862, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1035 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-23-201. Establishment — Members.

(a) There is established the Arkansas Waterways Commission to consist of seven (7) members to be appointed by the Governor with the advice and consent of the Senate, as follows:

(1) Each of the five (5) navigable stream basin areas of this state, i.e., the Arkansas River, White River, Ouachita River, Red River, and Mississippi River basin areas, shall through their organized associations established to promote the development of such basin areas, recommend to the Governor the names of three (3) qualified persons from each of their respective river basin areas of demonstrated experience and interest in river development;

(2) The Governor shall appoint from the list a person to represent each of the five (5) river basin areas on the commission; and

(3) The Governor shall name two (2) members from the public at large, one (1) of whom shall be an economist with experience in river development problems.

(b)(1) Members shall be appointed for seven-year staggered terms, wherein one (1) member's term shall expire each year on January 14.

(2) In the event there is no organized association established for the purpose of promoting the development of any of the five (5) river basin areas from which members are to be named, the Governor may name some person from the river basin area who resides therein and who has demonstrated interest in river development.

(c) Vacancies on the commission shall be filled for the remainder of the unexpired portion of the term thereof by appointment by the Governor in the manner set out in subsection (b) of this section.

(d) Members of the commission shall serve without pay but may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1967, No. 242, § 1; 1975 (Extended Sess., 1976), No. 1035, § 1; A.S.A. 1947, §§ 6-616, 21-1701; Acts 1987, No. 102, § 4; reen. Acts 1987, No. 862, § 1; 1997, No. 250, § 108.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 862, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the

1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Publisher's Notes. The terms of the members of the Arkansas Waterways Commission are arranged so that one term expires every year.

15-23-202. Duties.

(a) The Arkansas Waterways Commission, hereinafter referred to as the "commission", is authorized to:

(1) Study and coordinate efforts designed to promote the development of the navigable stream areas in this state for water transportation purposes;

(2) Encourage and coordinate the development of river port and harbor facilities;

(3) Recommend to the proper officials recreational restrictions in critical commercial navigation areas in order to promote public safety and expedite water transportation;

(4) Intercede on behalf of and represent the State of Arkansas in matters pertaining to the application of fees, tolls, or user charges levied or contemplated to be levied against the water transportation industry engaged in either intrastate or interstate water commerce;

(5)(A) Receive and use any federal, state, or private funds, donations, and grants made available for the development, use, and expansion of river transportation resources of this state.

(B) However, nothing in this section shall be deemed to deny or prohibit any city, county, port authority, or other governmental or private agency or authority from accepting such donations and grants as they are now authorized by law to receive;

(6)(A) Cooperate with and furnish assurances to the United States Government and any agencies thereof for improvement of the waterways of this state for the purpose of commercial navigation and other project purposes and contract with the Secretary of the Army and the Chief of Engineers of the United States Army Corps of Engineers to provide the necessary lands, easements, and rights-of-way in connection therewith;

(B) Share, if necessary, in the costs of the projects in the event the Chief of Engineers determines that it is necessary under applicable federal laws and policy; and

(C) Otherwise furnish local cooperation requirements of the laws authorizing projects;

(7) Have and exercise the power and authority to acquire such real and personal property, in the name of the State of Arkansas, by gift, grant, purchase, negotiation, or by condemnation, as the commission deems necessary or desirable to carry out its functions and responsibilities under this subchapter;

(8) Require all state agencies, boards, or commissions, when such agencies, boards, and commissions are planning industrial, residential, or recreational zoning, operational regulations or improvements involving channel alignments, bank stabilization, or bank and adjacent land uses, which would directly or indirectly affect commercial navigation on any of the state's inland waterways, and coordinate such planning with the commission;

(9) Require all state agencies, boards, and commissions having the power to give assurances over water resource projects to coordinate such activities with the commission prior to giving such assurances if such assurances are given in regard to projects and programs that are on the navigable waterways of the state or may affect these waterways;

(10) Authorize the assignment, transfer, lease, conveyance, grant, or donation of any or all of its property to the United States or to any agency or department thereof for the use of the United States in connection with the purposes of this subchapter;

(11)(A) Represent this state in the promotion of the development of commercial water transportation in this state and cooperate with

other states, other agencies of this state, or agencies of the United States Government, in any manner whatsoever, in an effort to develop the commercial use of the waterways in this state.

(B) The commission is empowered to study all executive orders and legislation, state and federal, which may affect the commercial development of interstate or intrastate water transportation and make recommendations concerning any such executive orders or legislation; and

(12) Do and perform all other functions for and in behalf of the state which may be necessary or desirable to accomplish the purposes of this subchapter, including, but not limited to, the making of studies and plans for the expansion, use, and growth of the water transportation resources and facilities of this state.

(b) Nothing contained in this section shall be construed to deny or otherwise restrict or prohibit any other agency or political subdivision of the State of Arkansas from exercising the same or similar functions as enumerated in this section as may be within its powers, responsibilities, and authorities.

History. Acts 1967, No. 242, § 2; 1973, No. 414, § 1; A.S.A. 1947, § 21-1702.

Publisher's Notes. In the event that Congress enacts legislation and provides federal funds for the "White River Navigation to Batesville" project, Acts 1985,

No. 219, § 1, authorizes the Arkansas Waterways Commission to cooperate with the United States Army Corps of Engineers to obtain project benefits and expend funds required for it.

15-23-203. Employees.

The Arkansas Waterways Commission may employ an Executive Director of the Arkansas Waterways Commission and such other employees as authorized by law and fix the salaries thereof within the limitations of funds appropriated therefor to assist the commission in the performance of its duties under this subchapter.

History. Acts 1967, No. 242, § 3; A.S.A. 1947, § 21-1703.

15-23-204. Report.

The Arkansas Waterways Commission shall biennially submit to the Governor and to the General Assembly a report of its activities, findings, and recommendations for the biennial period.

History. Acts 1967, No. 242, § 3; A.S.A. 1947, § 21-1703.

SUBCHAPTER 3 — ARKANSAS NATURAL AND SCENIC RIVERS SYSTEM ACT

SECTION.

15-23-301. Title.
15-23-302. Intent.

SECTION.

15-23-303. Definitions.
15-23-304 — 15-23-306. [Repealed.]

SECTION.

- 15-23-307. [Repealed.]
 15-23-308. Arkansas Natural Heritage Commission of the Department of Arkansas Heritage — Duties.
 15-23-309. Arkansas Natural Heritage Commission of the Department of Arkansas Heritage — Power to obtain property.
 15-23-310. Proposed contracts and compacts with the federal government.

SECTION.

- 15-23-311. Procedure for designation of river.
 15-23-312. Approval of management plan.
 15-23-313. Specific designations — Prohibitions — Policy — Exemptions.
 15-23-314. Protection of private lands.
 15-23-315. Funding.
 15-23-316. [Repealed.]
 15-23-317. [Repealed.]

A.C.R.C. Notes. References to “this subchapter” in §§ 15-23-301 — 15-23-315 may not apply to §§ 15-23-316 and 15-23-317 which were enacted subsequently.

Effective Dates. Acts 1979, No. 257, § 16: Mar. 5, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present law relating to the designation and preservation of natural and scenic rivers in the state is totally inadequate to accomplish this purpose; that it is in the best interests of the state of Arkansas that appropriate legislation be enacted as soon as possible to establish a natural and scenic rivers system and to prescribe the eligibility of streams for the system and the method of designating streams for the system; that this Act is designed to accomplish this purpose and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 840, § 42: July 1, 1983. Emergency clause provided: “It is hereby found and determined by the Seventy-Fourth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this Act are

provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

15-23-301. Title.

This subchapter shall be known as the "Arkansas Natural and Scenic Rivers System Act".

History. Acts 1979, No. 257, § 1; A.S.A. 1947, § 9-1201.

15-23-302. Intent.

(a) It is declared that certain rivers in the State of Arkansas possess outstanding natural, scenic, educational, geological, recreational, historical, fish and wildlife, scientific, and cultural values of great present and future benefit to the people.

(b) Those rivers that are identified as possessing these values shall be considered for inclusion into the Arkansas Natural and Scenic Rivers System.

(c) In all planning for the rivers' use and development, full consideration and evaluation shall be given to the rivers as a natural resource so that they shall be used and preserved for the welfare of all people.

(d) It is declared as the policy of the State of Arkansas that a balance be established between the alterations by man and the protection of natural beauty along certain rivers of this state.

History. Acts 1979, No. 257, § 2; A.S.A. 1947, § 9-1202.

15-23-303. Definitions.

As used in this subchapter:

(1) "Arkansas Natural and Scenic Rivers System" means those rivers or sections thereof designated as natural and scenic rivers by act of the General Assembly;

(2) "Natural rivers" means those rivers or sections thereof that are generally free from man-made impoundments and may have primitive, undeveloped roads whose lands are essentially primitive, i.e., with a minimal amount of disturbance by people. The water shall have the use classification AA according to the 1976 Arkansas water quality inventory report by the Arkansas Department of Environmental Quality;

(3) "Pastoral rivers" means rivers or sections thereof which are readily accessible, have some housing or other development near their shorelines, have preexisting impoundments that do not substantially alter the character and quality of the stream, partially or predominantly flow through agricultural areas, and have the use classification B according to the 1976 Arkansas water quality inventory report by the department;

(4)(A) "River" or "stream" means a natural body of water having a natural channel with a discernible bed and banks, including springs, lakes, marshes, swamps, sloughs, and brakes through which it may flow.

(B) The flow of a stream may be intermittent and at such irregular intervals as is characteristic of stream water resources in the surrounding area; and

(5)(A) "Scenic rivers" means rivers or sections thereof that are largely free of impoundments.

(B) The scenic rivers' shorelines may have a moderate amount of human disturbance which does not substantially interfere with the public use or fish and wildlife, natural vegetation, or water quality of the river.

History. Acts 1979, No. 257, § 8; A.S.A. 1947, § 9-1208; Acts 1999, No. 1164, §§ 134, 135.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'. (a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general

powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

15-23-304 — 15-23-306. [Repealed.]

Publisher's Notes. These sections, concerning Arkansas Natural and Scenic Rivers Commission creation, members, and organization, were repealed by Acts 1997, No. 1023, § 1. The sections were derived from the following sources:

15-23-304. Acts 1979, No. 257, § 4; A.S.A. 1947, § 9-1204.

15-23-305. Acts 1979, No. 257, §§ 4-6; A.S.A. 1947, §§ 9-1204 — 9-1206.

15-23-306. Acts 1979, No. 257, § 6; A.S.A. 1947, § 9-1206.

15-23-307. [Repealed.]

Publisher's Notes. This section, concerning an advisory council, was repealed by Acts 2001, No. 783, § 7. The section was derived from Acts 1979, No. 257, § 7;

A.S.A. 1947, § 9-1207; Acts 1997, No. 250, § 109; 1997, No. 1023, § 4; 1999, No. 1164, § 136.

15-23-308. Arkansas Natural Heritage Commission of the Department of Arkansas Heritage — Duties.

The Arkansas Natural Heritage Commission of the Department of Arkansas Heritage shall:

(1) Survey, evaluate, and assess the rivers to be considered for designation as components in the Arkansas Natural and Scenic Rivers System;

(2) Recommend to the General Assembly rivers to be considered for entry into the system;

(3) Contract for any professional services with any federal, state, or local governmental agency or private individual or organization as may be necessary for the proper performance of its functions under this subchapter;

(4) Organize, establish, and serve on an advisory committee for each river considered for recommendation for designation into the system; and

(5) Review water-related projects, including state and federal projects, for their potential impacts on the Arkansas natural stream system.

History. Acts 1979, No. 257, § 9; A.S.A. 1947, § 9-1209; Acts 1995, No. 1296, § 52; 1997, No. 1023, § 5.

15-23-309. Arkansas Natural Heritage Commission of the Department of Arkansas Heritage — Power to obtain property.

(a) The Arkansas Natural Heritage Commission of the Department of Arkansas Heritage shall have the authority to purchase or receive by gift, devise, grant, or dedication conservation easements in real property for the protection of rivers and streams in this state.

(b) The commission shall not have the power of eminent domain for purposes of performing its responsibilities relating to Arkansas' natural and scenic rivers.

History. Acts 1979, No. 257, § 12; 1985, No. 689, § 4; A.S.A. 1947, § 9-1212; Acts 1997, No. 1023, § 6.

15-23-310. Proposed contracts and compacts with the federal government.

Notwithstanding any provisions of this subchapter or any other law to the contrary, the Arkansas Natural Heritage Commission of the Department of Arkansas Heritage shall submit proposed contracts between it and the federal government to the Legislative Council for its review and shall not enter into any such contracts without the prior review of the Legislative Council.

History. Acts 1983, No. 840, § 39; A.S.A. 1947, § 9-1209.1; Acts 1997, No. 1023, § 7.

15-23-311. Procedure for designation of river.

The procedure that the Arkansas Natural Heritage Commission of the Department of Arkansas Heritage shall follow to submit a river to the General Assembly for designation as a component into the Arkansas Natural and Scenic Rivers System is as follows:

(1) The commission shall decide, based upon the classification and evaluation system, the priority of rivers to be considered for inclusion in the system;

(2)(A) Having selected a river for potential designation, the commission, with the advice of local county governments through which the river flows, shall establish an advisory committee.

(B) This committee shall:

(i)(a) Consist of three (3) members of the commission appointed by the chair to represent the state at large and five (5) members who are residents of the river area and appointed by the local county quorum court.

(b) If the river flows through more than one (1) county, four (4) members shall be appointed by each county quorum court.

(c) At least three (3) of the local residents of the four (4) appointed from each county shall be riparian landowners;

(ii) Assist and advise the commission concerning the planning for the management and protection of the river;

(iii) Serve at the call of the commission or on call of a majority of the members of the committee; and

(iv) Elect a chair from among its members;

(3)(A) A public hearing shall be held after the advisory committee has been appointed and a management plan has been drawn up.

(B) More public hearings may be held as needed;

(4)(A) The commission shall submit to the General Assembly a report showing the proposed area and classification, the characteristics which qualify the river for inclusion into the system, the general ownership and land use in the area, and the management plan approved by the commission.

(B) This report shall be made available to other concerned agencies for comment; and

(5) The management plan shall not be effective until enacted into law by the General Assembly.

History. Acts 1979, No. 257, § 10; A.S.A. 1947, § 9-1210; Acts 1997, No. 1023, § 8.

15-23-312. Approval of management plan.

(a) Notwithstanding any other provisions of this subchapter, no management plan or part thereof for a river or portion of a river included in or designated for inclusion in the Arkansas Natural and Scenic Rivers System shall be implemented or submitted to the General Assembly for its approval unless and until the proposed management plan has been submitted to and approved by the quorum court of the county in which the river or portion thereof is located.

(b) However, if the quorum court fails to take action to either approve or reject any such management plan or portion thereof within three (3) months from the date the plan is submitted to the quorum court, the

plan or the portions thereof not acted upon by the quorum court shall be deemed to have been approved.

History. Acts 1979, No. 257, § 14;
A.S.A. 1947, § 9-1214.

15-23-313. Specific designations — Prohibitions — Policy — Exemptions.

(a)(1) Notwithstanding any other provisions of this subchapter, the following segments of rivers or streams are designated as components of the Arkansas Natural and Scenic Rivers System:

(A) The Cossatot River, from Gillham Reservoir, Section 8, Township 5 South, Range 30 West, upstream to its headwaters near Baker Mountain, South Line of Section 15, Township 3 South, Range 30 West;

(B) The Strawberry River, from the line dividing Sharp County and Izard County, Section 12, Township 17 North, Range 7 West, upstream to its headwaters near Byron, North Line of Section 3, Township 19 North, Range 9 West;

(C) The Saline River, from its confluence with the Ouachita River, Section 9, Township 18 South, Range 10 West, upstream to the Saline-Grant County line; and

(D) The Little Missouri River, from the upper end of Lake Greeson, South Line of Section 31, Township 5 South, Range 26 West, upstream to its headwaters south of Big Fork, Center of Section 32, Township 3 South, Range 28 West.

(2) The requirement of establishing an advisory committee or developing a management plan as specified in §§ 15-23-308, 15-23-311, and 15-23-312 are waived for the segments of rivers or streams designated as components of the system pursuant to this section.

(b) The following provisions shall apply only to river segments and stream segments designated as components of the system pursuant to this section:

(1)(A) It shall be unlawful for any person to construct any permanent dam or other structure that would impound waters in the principal bed of any of the river segments or stream segments designated as components of the system pursuant to subsection (a) of this section.

(B) However, the establishment or maintenance of a water gap fence or low water bridge shall not be deemed a dam obstruction of the flow of such a river or stream unless the water gap fence results in impoundment of the waters of the river or stream; and

(2)(A) It shall be unlawful for any person to channelize or realign the principal channel of any of the river segments designated as components of the system pursuant to subsection (a) of this section.

(B) However, the clearing, snagging, or removing of river channel blockages caused by floods or other acts of nature shall not be deemed channelization.

(c) A violation of subsection (b) of this section shall be a Class C misdemeanor.

(d)(1) The Arkansas Natural Heritage Commission of the Department of Arkansas Heritage is authorized to apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any provision of this section or any rule or regulation promulgated under this section, notwithstanding the existence of other remedies at law.

(2) The injunction shall be issued without bond.

(e)(1) This section shall be construed so as to obtain reasonable conservation of waters in the streams designated in this section.

(2) The policy of this state is to:

(A) Protect the designated streams and the fish and wildlife in and around those streams;

(B) Maintain proper ecological balance;

(C) Protect water quality;

(D) Protect natural and scenic beauty;

(E) Protect riparian landowner rights; and

(F) Protect and preserve the designated streams in their natural and scenic state for future generations.

(f) None of the provisions of this section shall:

(1) Prohibit the continued use of all existing water intake structures and appurtenances for the purpose of withdrawal of surface water for any and all beneficial uses;

(2) Prohibit the construction of water intake structures in the future; or

(3) Be deemed to in any way impair or interfere with the continuation of the present uses of lands along any river or stream.

History. Acts 1979, No. 257, § 17 as 9-1217; Acts 1997, No. 1023, § 9; 1997 No. added by Acts 1985, No. 689, § 2; 1985, 1049, § 1.
No. 689, §§ 1, 3; A.S.A. 1947, §§ 9-1215 —

15-23-314. Protection of private lands.

Nothing in this subchapter shall be construed to give the public any greater right or privilege of access to private lands.

History. Acts 1979, No. 257, § 11;
A.S.A. 1947, § 9-1211.

15-23-315. Funding.

(a) The Arkansas Natural Heritage Commission of the Department of Arkansas Heritage may receive any money or property from federal, state, or private sources, including grants, contributions, gratuities, and loans.

(b) This is in addition to any state appropriation for staff salaries and maintenance and operation expenses.

History. Acts 1979, No. 257, § 13;
A.S.A. 1947, § 9-1213; Acts 1997, No. 1023, § 10.

15-23-316. [Repealed.]

Publisher's Notes. This section, concerning Arkansas Natural Heritage Commission of the Department of Arkansas Heritage membership, was repealed by

Acts 2005, No. 1962, § 69. The section was derived from Acts 1997, No. 1023, § 2.

15-23-317. [Repealed.]

Publisher's Notes. This section, concerning transfer of powers, was repealed by Acts 2005, No. 1962,

§ 70. The section was derived from Acts 1997, No. 1023, § 3.

SUBCHAPTER 4 — ARKANSAS RIVER BASIN COMPACT**SECTION.**

15-23-401. Approval and ratification —
Text.

Effective Dates. Acts 1971, No. 16, § 2: effective on ratification by Oklahoma and consent by U.S. Congress.

Acts 1972 (Ex. Sess.), No. 40, § 3: Feb. 17, 1972. Emergency clause provided: "It is hereby found and determined by the Sixty-Eighth General Assembly, meeting in Extraordinary Session that because of an amendment recently adopted by the State of Oklahoma's General Assembly, that the State of Arkansas must adopt a

like amendment to the River Basin Compact, Arkansas-Oklahoma, 1970, before approval and ratification by the United States Congress which is presently in session. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

15-23-401. Approval and ratification — Text.

The following interstate Compact between the State of Oklahoma and the State of Arkansas, respecting the waters of the Arkansas River Basin, is hereby approved and ratified.

**ARKANSAS RIVER BASIN COMPACT
ARKANSAS-OKLAHOMA, 1970**

The State of Arkansas and the State of Oklahoma, acting through their duly authorized Compact representatives, S. Keith Jackson of Arkansas, and Glade R. Kirkpatrick of Oklahoma, after negotiations participated in by Trigg Twichell, appointed by the President as the representative of the United States of America, pursuant to and in accordance with the consent to such negotiations granted by an Act of Congress of the United States of America (Public Law 97, 84th Congress, 1st session) approved June 28, 1955, have agreed as follows respecting the waters of the Arkansas River and its tributaries:

ARTICLE I

The major purposes of this Compact are:

A. To promote interstate comity between the States of Arkansas and Oklahoma;

B. To provide for an equitable apportionment of the waters of the Arkansas River between the States of Arkansas and Oklahoma and to promote the orderly development thereof;

C. To provide an agency for administering the water apportionment agreed to herein;

D. To encourage the maintenance of an active pollution abatement program in each of the two States and to seek the further reduction of both natural and man-made pollution in the waters of the Arkansas River Basin; and

E. To facilitate the cooperation of the water administration agencies of the States of Arkansas and Oklahoma in the total development and management of the water resources of the Arkansas River Basin.

ARTICLE II

As used in this Compact:

A. The term "State" means either State signatory hereto and shall be construed to include any person or persons, entity or agency of either State who, by reason of official responsibility or by designation of the Governor of that State, is acting as an official representative of that State.

B. The term "Arkansas-Oklahoma Arkansas River Compact Commission," or the term "Commission" means the agency created by this Compact for the administration thereof.

C. The term "Arkansas River Basin" means all of the drainage basin of the Arkansas River and its tributaries from a point immediately below the confluence of the Grand-Neosho River with the Arkansas River near Muskogee, Oklahoma, to a point immediately below the confluence of Lee Creek with the Arkansas River near Van Buren, Arkansas, together with the drainage basin of Spavinaw Creek in Arkansas, but excluding that portion of the drainage basin of the Canadian River above Eufaula Dam.

D. The term "Spavinaw Creek Sub-basin" means the drainage area of Spavinaw Creek in the State of Arkansas.

E. The term "Illinois River Sub-basin" means the drainage area of Illinois River in the State of Arkansas.

F. The term "Lee Creek Sub-basin" means the drainage area of Lee Creek in the State of Arkansas and the State of Oklahoma.

G. The term "Poteau River Sub-basin" means the drainage area of Poteau River in the State of Arkansas.

H. The term "Arkansas River Sub-basin" means all areas of the Arkansas River Basin except the four sub-basins described above.

I. The term "water-year" means a twelve-month period beginning on October 1, and ending September 30.

J. The term "annual yield" means the computed annual gross runoff from any specified sub-basin which would have passed any certain point on a stream and would have originated within any specified area under natural conditions, without any man-made depletion or accretion during the water year.

K. The term "pollution" means contamination or other alterations of the physical, chemical, biological or radiological properties of water or the discharge of any liquid, gaseous, or solid substances into any waters which creates, or is likely to result in a nuisance, or which renders or is likely to render the waters into which it is discharged harmful, detrimental or injurious to public health, safety, or welfare, or which is harmful, detrimental or injurious to beneficial uses of the water.

ARTICLE III

A. The physical and other conditions peculiar to the Arkansas River Basin constitute the basis of this Compact, and neither of the States hereby, nor the Congress of the United States by its consent hereto, concedes that this Compact established any general principle with respect to any other interstate stream.

B. By this Compact, neither State signatory hereto is relinquishing any interest or right it may have with respect to any waters flowing between them which do not originate in the Arkansas River Basin as defined by this Compact.

ARTICLE IV

The States of Arkansas and Oklahoma hereby agree upon the following apportionment of the waters of the Arkansas River Basin:

A. The State of Arkansas shall have the right to develop and use the waters of the Spavinaw Creek Sub-basin subject to the limitation that the annual yield shall not be depleted by more than fifty percent (50%).

B. The State of Arkansas shall have the right to develop and use the waters of the Illinois River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).

C. The State of Arkansas shall have the right to develop and use all waters originating within the Lee Creek Sub-basin in the State of Arkansas, or the equivalent thereof.

D. The State of Oklahoma shall have the right to develop and use all waters originating within the Lee Creek Sub-basin in the State of Oklahoma, or the equivalent thereof.

E. The State of Arkansas shall have the right to develop and use the waters of the Poteau River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).

F. The State of Oklahoma shall have the right to develop and use the waters of the Arkansas River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).

ARTICLE V

A. On or before December 31 of each year, following the effective date of this Compact, the Commission shall determine the stateline yields of the Arkansas River Basin for the previous water year.

B. Any depletion of annual yield in excess of that allowed by the provisions of this Compact shall, subject to the control of the Commission, be delivered to the downstream State, and said delivery shall consist of not less than sixty percent (60%) of the current runoff of the basin.

C. Methods for determining the annual yield of each of the sub-basins shall be those developed and approved by the Commission.

ARTICLE VI

A. Each State may construct, own, and operate for its needs water storage reservoirs in the other State, provided, however, that nothing contained in this Compact or its ratification by Arkansas or Oklahoma shall be interpreted as granting either state or the parties hereto, the right or power of eminent domain in any manner, whatsoever, outside the borders of its own state.

B. Depletion in annual yield of any sub-basin of the Arkansas River Basin caused by the operation of any water storage reservoir either heretofore or hereafter constructed by the United States or any of its agencies, instrumentalities or wards, or by a State, political subdivision thereof, or any person or persons shall be charged against the State in which the yield therefrom is utilized.

C. Each State shall have the free and unrestricted right to utilize the natural channel of any stream within the Arkansas River Basin for conveyance through the other State of waters released from any water storage reservoir for an intended downstream point of diversion or use without loss of ownership of such waters; provided, however, that a reduction shall be made in the amount of water which can be withdrawn at point of removal, equal to the transmission losses.

ARTICLE VII

The States of Arkansas and Oklahoma mutually agree to:

A. The principle of individual State effort to abate man-made pollution within each State's respective borders, and the continuing support of both States in an active pollution abatement program;

B. The cooperation of the appropriate State agencies in the States of Arkansas and Oklahoma to investigate and abate sources of alleged interstate pollution within the Arkansas River Basin;

C. Enter into joint programs for the identification and control of sources of pollution of the waters of the Arkansas River and its tributaries which are of interstate significance;

D. The principle that neither State may require the other to provide water for the purpose of water quality control as a substitute for adequate waste treatment;

E. Utilize the provisions of all Federal and State water pollution laws and to recognize such water quality standards as may be now or hereafter established under the Federal Water Pollution Control Act in the resolution of any pollution problems affecting the waters of the Arkansas River Basin.

ARTICLE VIII

A. There is hereby created an interstate administrative agency to be known as the "Arkansas-Oklahoma Arkansas River Compact Commission." The commission shall be composed of three Commissioners representing the State of Arkansas and three Commissioners representing the State of Oklahoma, selected as provided below; and, if designated by the President or an authorized Federal agency, one Commissioner representing the United States. The President, or the Federal agency authorized to make such appointments, is hereby requested to designate a Commissioner and an alternate representing the United States. The Federal Commissioner, if one be designated, shall be the Chairman and presiding officer of the Commission, but shall not have the right to vote in any of the deliberations of the Commission.

B. One Arkansas Commissioner shall be the Director of the Arkansas Soil and Water Conservation Commission, or such other agency as may be hereafter responsible for administering water law in the State. The other two Commissioners shall reside in the Arkansas River drainage area in the State of Arkansas and shall be appointed by the Governor, by and with the advice and consent of the Senate, to four-year staggered terms with the first two Commissioners being appointed simultaneously to terms of two (2) and four (4) years, respectively.

C. One Oklahoma Commissioner shall be the Director of the Oklahoma Water Resources Board, or such other agency as may be hereafter responsible for administering water law in the State. The other two commissioners shall reside within the Arkansas River drainage area in the State of Oklahoma and shall be appointed by the Governor, by and with the advice and consent of the Senate, to four-year staggered terms, with the first two Commissioners being appointed simultaneously to terms of two (2) and four (4) years, respectively.

D. A majority of the Commissioners of each State and the Commissioner or his alternate representing the United States, if they are so designated, must be present to constitute a quorum. In taking any Commission action, each signatory State shall have a single vote representing the majority opinion of the Commissioners of that State.

E. In the case of a tie vote on any of the Commission's determinations, order, or other actions, a majority of the Commissioners of either State may, upon written request to the Chairman, submit the question to arbitration. Arbitration shall not be compulsory, but on the event of arbitration, there shall be three arbitrators:

(1) One named by resolution duly adopted by the Arkansas Soil and Water Conservation Commission, or such other state agency as may be

hereafter responsible for administering water law in the State of Arkansas; and

(2) One named by resolution duly adopted by the Oklahoma Water Resources Board, or such other State agency as may be hereafter responsible for administering water law in the State of Oklahoma; and

(3) The third chosen by the two arbitrators who are selected as provided above.

If the arbitrators fail to select a third within sixty (60) days following their selection, then he shall be chosen by the Chairman of the Commission.

F. The salaries and personal expenses of each Commissioner shall be paid by the Government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact shall be borne equally by the two States and shall be paid by the Commission out of the "Arkansas-Oklahoma Arkansas River Compact Fund," initiated and maintained as provided in Article IX (B)(5) below. The States hereby mutually agree to appropriate sums sufficient to cover its share of the expenses incurred in the administration of this Compact, to be paid into said fund. Disbursements shall be made from said fund in such manner as may be authorized by the Commission. Such funds shall not be subject to the audit and accounting procedures of the States; however, all receipts and disbursements of funds handled by the Commission shall be audited by a qualified independent public accountant at regular intervals, and the report of such audit shall be included in and become a part of the annual report of the Commission, provided by Article IX (B)(6) below. The Commission shall not pledge the credit of either State and shall not incur any obligations prior to the availability of funds adequate to meet the same.

ARTICLE IX

A. The Commission shall have the power to:

(1) Employ such engineering, legal, clerical and other personnel as in its judgment may be necessary for the performance of its functions under this Compact;

(2) Enter into contracts with appropriate State or Federal agencies for the collection, correlation, and presentation of factual data, for the maintenance of records, and for the preparation of reports;

(3) Establish and maintain an office for the conduct of its affairs;

(4) Adopt and procure a seal for its official use;

(5) Adopt rules and regulations governing its operations. The procedures employed for the administration of this Compact shall not be subject to any Administrative Procedures Act of either State, but shall be subject to the provisions hereof and to the rules and regulations of the Commission; provided, however, all rules and regulations of the Commission shall be filed with the Secretary of State of the signatory States;

(6) Cooperate with Federal and State agencies and political subdivisions of the signatory States in developing principles, consistent with

the provisions of this Compact and with Federal and State policy, for the storage and release of water from reservoirs, both existing and future within the Arkansas River Basin, for the purpose of assuring their operation in the best interests of the States and the United States;

(7) Hold hearings and compel the attendance of witnesses for the purpose of taking testimony and receiving other appropriate and proper evidence and issuing such appropriate orders as it deems necessary for the proper administration of this Compact, which orders shall be enforceable upon the request by the Commission or any other interested party in any court of competent jurisdiction within the county wherein the subject matter to which the order relates is in existence, subject to the right of review through the appellate courts of the State of situs. Any hearing held for the promulgation and issuance of orders shall be in the county and State of the subject matter of said hearing;

(8) Make and file official certified copies of any of its findings, recommendations or reports with such officers or agencies of either State, or the United States, as may have any interest in or jurisdiction over the subject matter. Findings of fact made by the Commission shall be admissible in evidence and shall constitute prima facie evidence of such fact in any court or before any agency of competent jurisdiction. The making of findings, recommendations, or reports by the Commission shall not be a condition precedent to instituting or maintaining any action or proceeding of any kind by a signatory State in any court, or before any tribunal, agency or officer, for the protection of any right under this Compact or for the enforcement of any of its provisions;

(9) Secure from the head of any department or agency of the Federal or State government such information, suggestions, estimates and statistics as it may need or believe to be useful for carrying out its functions and as may be available to or procurable by the department or agency to which the request is addressed;

(10) Print or otherwise reproduce and distribute all of its proceedings and reports; and

(11) Accept, for the purposes of this Compact, any and all private donations and gifts and Federal grants of money.

B. The Commission shall:

(1) Cause to be established, maintained and operated such stream, reservoir or other gauging stations as may be necessary for the proper administration of this Compact;

(2) Collect, analyze and report on data as to stream flows, water quality, annual yields and such other information as is necessary for the proper administration of this Compact;

(3) Continue research for developing methods of determining total basin yields;

(4) Perform all other functions required of it by the Compact and do all things necessary, proper or convenient in the performance of its duties thereunder;

(5) Establish and maintain the "Arkansas-Oklahoma Arkansas River Compact Fund," consisting of any and all funds received by the

Commission under the authority of this Compact and deposited in one or more banks qualifying for the deposit of public funds of the signatory States;

(6) Prepare and submit an annual report to the Governor of each signatory State and to the President of the United States covering the activities of the Commission for the preceding fiscal year, together with an accounting of all funds received and expended by it in the conduct of its work;

(7) Prepare and submit to the Governor of each of the States of Arkansas and Oklahoma an annual budget covering the anticipated expenses of the Commission for the following fiscal year; and

(8) Make available to the Governor or any State agency of either State or to any authorized representative of the United States, upon request, any information within its possession.

ARTICLE X

A. The provisions hereof shall remain in full force and effect until changed or amended by unanimous action of the States acting through their Commissioners and until such changes are ratified by the legislatures of the respective States and consented to by the Congress of the United States in the same manner as this Compact is required to be ratified to become effective.

B. This Compact may be terminated at any time by the appropriate action of the legislature of both signatory States.

C. In the event of amendment or termination of the Compact, all rights established under the Compact shall continue unimpaired.

ARTICLE XI

Nothing in this Compact shall be deemed:

A. To impair or affect the powers, rights or obligations of the United States, or those claiming under its authority in, over and to the waters of the Arkansas River Basin;

B. To interfere with or impair the right or power of either signatory State to regulate within its boundaries of appropriation, use and control of waters within that State not inconsistent with its obligations under this Compact.

ARTICLE XII

If any part or application of this Compact should be declared invalid by a court of competent jurisdiction, all other provisions and application of this Compact shall remain in full force and effect.

ARTICLE XIII

A. This Compact shall become binding and obligatory when it shall have been ratified by the legislature of each State and consented to by the Congress of the United States, and when the Congressional Act

consenting to this Compact includes the consent of Congress to name and join the United States as a party in any litigation in the United States Supreme Court, if the United States is an indispensable party, and if the litigation arises out of this Compact or its application, and if a signatory State is a party thereto.

B. The States of Arkansas and Oklahoma mutually agree and consent to be sued in the United States District Court under the provisions of Public Law 87-830 as enacted October 15, 1962, or as may be thereafter amended.

C. Notice of ratification by the legislature of each State shall be given by the Governor of that State to the Governor of the other State, and to the President of the United States, and the President is hereby requested to give notice to the Governor of each State of consent by the Congress of the United States.

IN WITNESS WHEREOF, the authorized representatives have executed three counterparts hereof each of which shall be and constitute an original, one of which shall be deposited with the Administrator of General Services of the United States, and one of which shall be forwarded to the Governor of each State.

DONE at the City of Little Rock, State of Arkansas, this 16th day of March, A.D., 1970.

FOR ARKANSAS:

/s/ S. Keith Jackson
S. Keith Jackson
Committee Member
/s/ John Luce
John Luce
Committee Member

FOR OKLAHOMA:

/s/ Glade R. Kirkpatrick
Glade R. Kirkpatrick
Committee Member
/s/ Milton Craig
Milton Craig
Committee Member

Approved: /s/ Trigg Twichell

United States of America

Attest: /s/ Willard B. Mills

History. Acts 1971, No. 16, § 1; 1972 (Ex. Sess.), No. 40, § 1; A.S.A. 1947, § 21-2101.

Publisher's Notes. The "Arkansas Soil and Water Conservation Commission", as referenced in Article VIII of this section, is now the "Arkansas Natural Resources

Commission" as renamed by Acts 2005, No. 1243, § 3 at § 15-20-201.

U.S. Code. The Federal Water Pollution Control Act, referred to in Article VII, is primarily codified, as amended, as 33 U.S.C. § 1251 et seq.

SUBCHAPTER 5 — RED RIVER COMPACT

SECTION.

15-23-501. Approval and ratification — Text.

SECTION.

15-23-502. Effective date of compact.
15-23-503. Commissioners.

15-23-501. Approval and ratification — Text.

The following interstate Compact between the States of Arkansas, Oklahoma, Texas and Louisiana, respecting the water of the Red River Basin, is hereby approved and ratified:

RED RIVER COMPACT**ARTICLE I****Purposes**

SECTION 1.01. The principal purposes of this Compact are:

(a) To promote interstate comity and remove causes of controversy between each of the affected states by governing the use, control and distribution of the interstate water of the Red River and its tributaries;

(b) To provide an equitable apportionment among the Signatory States of the water of the Red River and its tributaries;

(c) To promote an active program for the control and alleviation of natural deterioration and pollution of the water of the Red River Basin and to provide for enforcement of the laws related thereto;

(d) To provide the means for an active program for the conservation of water, protection of lives and property from floods, improvement of water quality, development of navigation and regulation of flows in the Red River Basin; and

(e) To provide a basis for state or joint state planning and action by ascertaining and identifying each state's share in the interstate water of the Red River Basin and the apportionment thereof.

ARTICLE II**General Provisions**

SECTION 2.01. Each Signatory State may use the water allocated to it by this Compact in any manner deemed beneficial by that state. Each state may freely administer water rights and uses in accordance with the laws of that state, but such uses shall be subject to the availability of water in accordance with the apportionments made by this Compact.

SECTION 2.02. The use of water by the United States in connection with any individual Federal project shall be in accordance with the Act of Congress authorizing the project and the water shall be charged to the state or states receiving the benefit therefrom.

SECTION 2.03. Any Signatory State using the channel of Red River or its tributaries to convey stored water shall be subject to an appropriate reduction in the amount which may be withdrawn at the point of removal to account for transmission losses.

SECTION 2.04. The failure of any state to use any portion of the water allocated to it shall not constitute relinquishment or forfeiture of the right to such use.

SECTION 2.05. Each Signatory State shall have the right to:

(a) Construct conservation storage capacity for the impoundment of water allocated by this Compact;

(b) Replace within the same area any storage capacity recognized or authorized by this Compact made unusable by any cause, including losses due to sediment storage;

(c) Construct reservoir storage capacity for the purposes of flood and sediment control as well as storage of water which is either imported or is to be exported if such storage does not adversely affect the delivery of water apportioned to any other Signatory State; and

(d) Use the bed and banks of the Red River and its tributaries to convey stored water, imported or exported water, and water apportioned according to this Compact.

SECTION 2.06. Signatory States may cooperate to obtain construction of facilities of joint benefits to such states.

SECTION 2.07. Nothing in this Compact shall be deemed to impair or affect the powers, rights, or obligations of the United States, or those claiming under its authority, in, over and to water of the Red River Basin.

SECTION 2.08. Nothing in this Compact shall be construed to include within the water apportioned by this Compact any water consumed in each state by livestock or for domestic purposes; provided, however, the storage of such water is in accordance with the laws of the respective states but any such impoundment shall not exceed two hundred acre-feet, or such smaller quantity as may be provided for by the laws of each state.

SECTION 2.09. In the event any state shall import water into the Red River Basin from any other river basin, the Signatory State making the importation shall have the use of such imported water.

SECTION 2.10. Nothing in this Compact shall be deemed to:

(a) Interfere with or impair the right or power of any Signatory State to regulate within its boundaries the appropriation, use, and control of water, or quality of water, not inconsistent with its obligations under this Compact;

(b) Repeal or prevent the enactment of any legislation or the enforcement of any requirement by any Signatory State imposing any additional conditions or restrictions to further lessen or prevent the pollution or natural deterioration of water within its jurisdiction; provided nothing contained in this paragraph shall alter any provision of this Compact dealing with the apportionment of water or the rights thereto; or

(c) Waive any state's immunity under the Eleventh Amendment of the Constitution of the United States, or as constituting the consent of any state to be sued by its own citizens.

SECTION 2.11. Accounting for apportionment purposes on interstate streams shall not be mandatory under the terms of the Compact until one or more affected states deem the accounting necessary.

SECTION 2.12. For the purposes of apportionment of the water among the Signatory States, the Red River is hereby divided into the following major subdivisions:

(a) Reach I — the Red River and tributaries from the New Mexico-Texas State boundary to Denison Dam;

(b) Reach II — the Red River from Denison Dam to the point where it crosses the Arkansas-Louisiana state boundary and all tributaries which contribute to the flow of the River within this reach;

(c) Reach III — the tributaries west of the Red River which cross the Texas-Louisiana state boundary, the Arkansas-Louisiana state boundary, and those which cross both the Texas-Arkansas state boundary and the Arkansas-Louisiana state boundary;

(d) Reach IV — the tributaries east of the Red River in Arkansas which cross the Arkansas-Louisiana state boundary; and

(e) Reach V — that portion of the Red River and tributaries in Louisiana not included in Reach III or in Reach IV.

SECTION 2.13. If any part or application of this Compact shall be declared invalid by a court of competent jurisdiction, all other severable provisions and applications of this Compact shall remain in full force and effect.

SECTION 2.14. Subject to the availability of water in accordance with this Compact, nothing in this Compact shall be held or construed to alter, impair or increase, validate, or prejudice any existing water right or right of water use that is legally recognized on the effective date of this Compact by either statutes or courts of the Signatory State within which it is located.

ARTICLE III

Definitions

SECTION 3.01. In this Compact: (a) The States of Arkansas, Louisiana, Oklahoma, and Texas are referred to as “Arkansas,” “Louisiana,” “Oklahoma,” and “Texas,” respectively, or individually as “State” or “Signatory State,” or collectively as “States” or “Signatory States.”

(b) The term “Red River” means the stream below the crossing of the Texas-Oklahoma state boundary at longitude 100 degrees west.

(c) The term “Red River Basin” means all of the natural drainage area of the Red River and its tributaries east of the New Mexico-Texas state boundary and above its junction with Atchafalaya and Old Rivers.

(d) The term “water of the Red River Basin” means the water originating in any part of the Red River Basin and flowing to or in the Red River or any of its tributaries.

(e) The term “tributary” means any stream which contributes to the flow of the Red River.

(f) The term “interstate tributary” means a tributary of the Red River, the drainage area of which includes portions of two or more Signatory States.

(g) The term “intrastate tributary” means a tributary of the Red River, the drainage area of which is entirely within a single Signatory State.

(h) The term “Commission” means the agency created by Article IX of this Compact for the administration thereof.

(i) The term "pollution" means the alteration of the physical, chemical, or biological characteristics of water by the acts or instrumentalities of man which create or are likely to result in a material and adverse effect upon human beings, domestic or wild animals, fish and other aquatic life, or adversely affect any other lawful use of such water; provided, that for the purposes of this Compact, "pollution" shall not mean or include "natural deterioration."

(j) The term "natural deterioration" means the material reduction in the quality of water resulting from the leaching of solubles from the soils and rocks through or over which the water flows naturally.

(k) The term "designated water" means water released from storage, paid for by non-Federal interests, for delivery to a specific point of use or diversion.

(l) The term "undesignated water" means all water released from storage other than "designated water."

(m) The term "conservation storage capacity" means that portion of the active capacity of reservoirs available for the storage of water for subsequent beneficial use, and it excludes any portion of the capacity of reservoirs allocated solely to flood control and sediment control, or either of them.

(n) The term "runoff" means both the portion of precipitation which runs off the surface of a drainage area and that portion of the precipitation that enters the streams after passing through the portions of the earth.

ARTICLE IV

Apportionment of Water — Reach I

Oklahoma — Texas

Subdivision of Reach I and apportionment of water therein.

Reach I of the Red River is divided into topographical subbasins, with the water therein allocated as follows:

SECTION 4.01. Subbasin 1 — Interstate streams — Texas.

(a) This includes the Texas portion of Buck Creek, Sand (Lebos) Creek, Salt Fork Red River, Elm Creek, North Fork Red River, Sweetwater Creek, and Washita River, together with all their tributaries in Texas which lie west of the 100th Meridian.

(b) The annual flow within this subbasin is hereby apportioned sixty (60) percent to Texas and forty (40) percent to Oklahoma.

SECTION 4.02. Subbasin 2 — Intrastate and interstate streams — Oklahoma.

(a) This subbasin is composed of all tributaries of the Red River in Oklahoma and portions thereof upstream to the Texas-Oklahoma state boundary at longitude 100 degrees west, beginning from Denison Dam and upstream to and including Buck Creek.

(b) The State of Oklahoma shall have free and unrestricted use of the water of this subbasin.

SECTION 4.03. Subbasin 3 — Intrastate streams — Texas.

(a) This includes the tributaries of the Red River in Texas, beginning from Denison Dam and upstream to and including Prairie Dog Town Fork Red River.

(b) The State of Texas shall have free and unrestricted use of the water in this subbasin.

SECTION 4.04. Subbasin 4 — Mainstem of the Red River and Lake Texoma.

(a) This subbasin includes all of Lake Texoma and the Red River beginning at Denison Dam and continuing upstream to the Texas-Oklahoma state boundary at longitude 100 degrees west.

(b) The storage of Lake Texoma and flow from the main stem of the Red River into Lake Texoma is apportioned as follows:

(1) Oklahoma 200,000 acre-feet and Texas 200,000 acre-feet, which quantities shall include existing allocations and uses; and

(2) Additional quantities in a ratio of fifty (50) percent to Oklahoma and fifty (50) percent to Texas.

SECTION 4.05. Special provisions.

(a) Texas and Oklahoma may construct, jointly or in cooperation with the United States, storage or other facilities for the conservation and use of water; provided that any facilities constructed on the Red River boundary between the two states shall not be inconsistent with the Federal legislation authorizing Denison Dam and Reservoir project.

(b) Texas shall not accept for filing, or grant a permit, for the construction of a dam to impound water solely for irrigation, flood control, soil conservation, mining and recovery of minerals, hydroelectric power, navigation, recreation and pleasure, or for any other purpose other than for domestic, municipal, and industrial water supply, on the main stem of the North Fork Red River or any of its tributaries within Texas above Lugert-Altus Reservoir until the date that imported water, sufficient to meet the municipal and irrigation needs of Western Oklahoma is provided, or until January 1, 2000, whichever occurs first.

ARTICLE V

Apportionment of Water — Reach II Arkansas, Oklahoma, Texas and Louisiana.

Subdivision of Reach II and allocation of water therein. Reach II of the Red River is divided into topographic subbasins, and the water therein is allocated as follows:

SECTION 5.01. Subbasin 1 — Intrastate streams — Oklahoma.

(a) This subbasin includes those streams and their tributaries above existing, authorized or proposed last downstream major damsites, wholly in Oklahoma and flowing into Red River below Denison Dam and above the Oklahoma-Arkansas state boundary. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
Island-Bayou	Albany	85,200	33°51.5'N	96°11.4'W
Blue River	Durant	147,000	33°55.5'N	96°04.2'W
Boggy River	Boswell	1,243,800	34°01.6'N	95°45.0'W
Kiamichi River	Hugo	240,700	34°01.0'N	95°22.6'W

(b) Oklahoma is apportioned the water of this subbasin and shall have unrestricted use thereof.

SECTION 5.02. Subbasin 2 — Intrastate streams — Texas.

(a) This subbasin includes those streams and their tributaries above existing authorized or proposed last downstream major damsites, wholly in Texas and flowing into Red River below Denison Dam and above the Texas-Arkansas state boundary. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
Shawnee Creek	Randall Lake	5,400	33°48.1'N	96°34.8'W
Brushy Creek	Valley Lake	15,000	33°38.7'N	96°21.5'W
Bois d' Arc Creek	New Bonham Reservoir	130,600	33°42.9'N	95°58.2'W
Coffee Mill Creek	Coffee Mill Lake	8,000	33°44.1'N	95°58.0'W
Sandy Creek	Lake Crockett	3,900	33°44.5'N	95°55.5'W
Sanders Creek	Pat Mayse	124,500	33°51.2'N	95°32.9'W
Pine Creek	Lake Crook	11,011	33°43.7'N	95°34.0'W
Big Pine Creek	Big Pine Lake	138,600	33°52.0'N	95°11.7'W
Pecan Bayou	Pecan Bayou	625,000	33°41.1'N	94°58.7'W
Mud Creek	Liberty Hill	97,700	33°33.0'N	94°29.3'W
Mud Creek	KVW Ranch Lakes	3,440	33°34.8'N	94°27.3'W

(b) Texas is apportioned the water of this subbasin and shall have unrestricted use thereof.

SECTION 5.03. Subbasin 3 — Interstate streams — Oklahoma and Arkansas.

(a) This subbasin includes Little River and its tributaries above Millwood Dam.

(b) The States of Oklahoma and Arkansas shall have free and unrestricted use of the water of this subbasin within their respective states, subject, however, to the limitation that Oklahoma shall allow a

quantity of water equal to 40 percent of the total runoff originating below the following existing, authorized or proposed last downstream major damsites in Oklahoma to flow into Arkansas:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
Little River	Pine Creek	70,500	34°06.8'N	95°04.9'W
Glover Creek	Lukfata	258,600	34°08.5'N	94°55.4'W
Mountain Fork River	Broken Bow	470,100	34°08.9'N	94°41.2'W

(c) Accounting will be on an annual basis unless otherwise deemed necessary by the States of Arkansas and Oklahoma.

SECTION 5.04. Subbasin 4 — Interstate streams — Texas and Arkansas.

(a) This subbasin shall consist of those streams and their tributaries above existing, authorized or proposed last downstream major damsites, originating in Texas and crossing the Texas-Arkansas state boundary before flowing into the Red River in Arkansas. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
McKinney Bayou Trib.	Bringle Lake	3,052	33°30.6'N	94°06.2'W
Barkman Creek	Barkman Reservoir	15,900	33°29.7'N	94°10.3'W
Sulphur River	Texarkana	386,900	33°18.3'N	94°09.6'W

(b) The State of Texas shall have the free and unrestricted use of the water of this subbasin.

SECTION 5.05. Subbasin 5 — Mainstem of the Red River and tributaries.

(a) This subbasin includes that portion of the Red River, together with its tributaries, from Denison Dam down to the Arkansas-Louisiana state boundary, excluding all tributaries included in the other four subbasins of Reach II.

(b) Water within this subbasin is allocated as follows:

(1) The Signatory States shall have equal rights to the use of runoff originating in subbasin 5 and undesignated water flowing into subbasin 5, so long as the flow of the Red River at the Arkansas-Louisiana state boundary is 3,000 cubic feet per second or more, provided no state is entitled to more than 25 percent of the water in excess of 3,000 cubic feet per second.

(2) Whenever the flow of the Red River at the Arkansas-Louisiana state boundary is less than 3,000 cubic feet per second, but more than

1,000 cubic feet per second, the States of Arkansas, Oklahoma, and Texas shall allow to flow into the Red River for delivery to the State of Louisiana a quantity of water equal to 40 percent of the total weekly runoff originating in subbasin 5 and 40 percent of undesignated water flowing into subbasin; provided, however, that this requirement shall not be interpreted to require any state to release stored water.

(3) Whenever the flow of the Red River at the Arkansas-Louisiana state boundary falls below 1,000 cubic feet per second, the States of Arkansas, Oklahoma, and Texas shall allow a quantity of water equal to all the weekly runoff originating in subbasin 5 and all undesignated water flowing into subbasin 5 within their respective states to flow into the Red River as required to maintain a 1,000 cubic foot per second flow at the Arkansas-Louisiana state boundary.

(c) Whenever the flow at Index, Arkansas, is less than 526 c.f.s., the states of Oklahoma and Texas shall each allow a quantity of water equal to 40 percent of the total weekly runoff originating in subbasin 5 within their respective states to flow into the Red River; provided however, this provision shall be invoked only at the request of Arkansas, only after Arkansas has ceased all diversions from the Red River itself in Arkansas above Index, and only if the provisions of Subsections 5.05 (b) (2) and (3) have not caused a limitation of diversions in subbasin 5.

(d) No state guarantees to maintain a minimum low flow to a downstream state.

SECTION 5.06. Special Provisions.

(a) Reservoirs within the limits of Reach II, subbasin 5, with a conservation storage capacity of 1,000 acre feet or less in existence or authorized on the date of the Compact pursuant to the rights and privileges granted by a Signatory State authorizing such reservoirs, shall be exempt from the provisions of Section 5.05; provided, if any right to store water in, or use water from, an existing exempt reservoir expires or is cancelled after the effective date of the Compact the exemption for such rights provided by this section shall be lost.

(b) A Signatory State may authorize a change in the purpose or place of use of water from a reservoir exempted by subparagraph (a) of this section without losing that exemption, if the quantity of authorized use and storage is not increased.

(c) Additionally, exemptions from the provisions of Section 5.05 shall not apply to direct diversions from Red River to off-channel reservoirs or lands.

ARTICLE VI

Apportionment of Water — Reach III Arkansas, Louisiana, and Texas

Subdivision of Reach III and allocation of water therein. Reach III of the Red River is divided into topographic subbasins, and the water therein allocated, as follows:

SECTION 6.01. Subbasin 1 — Interstate streams — Arkansas and Texas.

(a) This subbasin includes the Texas portion of those streams crossing the Arkansas-Texas state boundary one or more times and flowing through Arkansas into Cypress Creek-Twelve Mile Bayou watershed in Louisiana.

(b) Texas is apportioned sixty (60) percent of the run-off of this subbasin and shall have unrestricted use thereof; Arkansas is entitled to forty (40) percent of the runoff of this subbasin.

SECTION 6.02. Subbasin 2 — Interstate streams — Arkansas and Louisiana.

(a) This subbasin includes the Arkansas portion of those streams flowing from Subbasin 1 into Arkansas, as well as other streams in Arkansas which cross the Arkansas-Louisiana state boundary one or more times and flow into Cypress Creek-Twelve Mile Bayou watershed in Louisiana.

(b) Arkansas is apportioned sixty (60) percent of the runoff of this subbasin and shall have unrestricted use thereof; Louisiana is entitled to forty (40) percent of the runoff of this subbasin.

SECTION 6.03. Subbasin 3 — Interstate streams — Texas and Louisiana.

(a) This subbasin includes the Texas portion of all tributaries crossing the Texas-Louisiana state boundary one or more times and flowing into Caddo Lake, Cypress Creek-Twelve Mile Bayou, or Cross Lake, as well as the Louisiana portion of such tributaries.

(b) Texas and Louisiana within their respective boundaries shall each have the unrestricted use of the water of this subbasin subject to the following allocation:

(1) Texas shall have the unrestricted right to all water above Marshall, Lake O' the Pines, and Black Cypress damsites; however, Texas shall not cause runoff to be depleted to a quantity less than that which would have occurred with the full operation of Franklin County, Titus County, Ellison Creek, Johnson Creek, Lake O' the Pines, Marshall, and Black Cypress Reservoirs constructed, and those other impoundments and diversions existing on the effective date of this Compact. Any depletions of runoff in excess of the depletions described above shall be charged against Texas' apportionment of the water in Caddo Reservoir.

(2) Texas and Louisiana shall each have the unrestricted right to use fifty (50) percent of the conservation storage capacity in the present Caddo Lake for the impoundment of water for state use, subject to the provision that supplies for existing uses of water from Caddo Lake, on date of Compact, are not reduced.

(3) Texas and Louisiana shall each have the unrestricted right to fifty (50) percent of the conservation storage capacity of any future enlargement of Caddo Lake, provided, the two states may negotiate for the release of each state's share of the storage space on terms mutually agreed upon by the two states after the effective date of this Compact.

(4) Inflow to Caddo Lake from its drainage area downstream from Marshall, Lake O' the Pines, and Black Cypress damsites and downstream from other last downstream dams in existence on the date of the signing of the Compact document by the Compact Commissioners, will be allowed to continue flowing into Caddo Lake except that any man-made depletions to this inflow by Texas will be subtracted from the Texas share of the water in Caddo Lake.

(c) In regard to the water of interstate streams which do not contribute to the inflow to Cross Lake or Caddo Lake, Texas shall have the unrestricted right to divert and use this water on the basis of a division of runoff above the state boundary of sixty (60) percent to Texas and forty (40) percent to Louisiana.

(d) Texas and Louisiana will not construct improvements on the Cross Lake watershed in either state that will affect the yield of Cross Lake; provided, however, this subsection shall be subject to the provisions of Section 2.08.

SECTION 6.04. Subbasin 4 — Intrastate streams — Louisiana.

(a) This subbasin includes that area of Louisiana in Reach III not included within any other subbasin.

(b) Louisiana shall have free and unrestricted use of the water of this subbasin.

ARTICLE VII

Apportionment of Water — Reach IV
Arkansas and Louisiana

Subdivision of Reach IV and allocation of water therein. Reach IV of the Red River is divided into topographic subbasins, and the water therein allocated as follows:

SECTION 7.01. Subbasin 1 — Intrastate streams — Arkansas.

(a) This subbasin includes those streams and their tributaries above last downstream major damsites originating in Arkansas and crossing the Arkansas-Louisiana state boundary before flowing into the Red River in Louisiana. Those major last downstream damsites are as follows:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
Ouachita River	Lake Catherine	19,000	34°26.6'N	93°01.6'W
	DeGray			
Caddo River	Lake	1,377,000	34°13.2'N	93°06.6'W
Little Missouri River	Lake Greeson	600,000	34°08.9'N	93°42.9'W
Alum Fork, Saline River	Lake Winona	63,264	32°47.8'N	92°51.0'W

(b) Arkansas is apportioned the waters of this subbasin and shall have unrestricted use thereof.

SECTION 7.02. Subbasin 2 — Interstate streams — Arkansas and Louisiana.

(a) This subbasin shall consist of Reach IV less subbasin 1 as defined in Section 7.01 (a) above.

(b) The State of Arkansas shall have free and unrestricted use of the water of this reach subject to the limitation that Arkansas shall allow a quantity of water equal to forty (40) percent of the weekly runoff originating below or flowing from the last downstream major damsites to flow into Louisiana. Where there are no designated last downstream damsites, Arkansas shall allow a quantity of water equal to forty (40) percent of the total weekly runoff originating above the state boundary to flow into Louisiana. Use of water in this subbasin is subject to low flow provisions of subparagraph 7.02(b).

SECTION 7.03. Special Provisions.

(a) Arkansas may use the beds and banks of segments of Reach IV for the purpose of conveying its share of water to designated downstream diversions.

(b) The State of Arkansas does not guarantee to maintain a minimum low flow for Louisiana in Reach IV. However, on the following streams when the use of water in Arkansas reduces the flow at the Arkansas-Louisiana state boundary to the following amounts:

- (1) Ouachita — 780 cfs
- (2) Bayou Bartholomew — 80 cfs
- (3) Boeuf River — 40 cfs
- (4) Bayou Macon — 40 cfs

the State of Arkansas pledges to take affirmative steps to regulate the diversions of runoff originating or flowing into Reach IV in such a manner as to permit an equitable apportionment of the runoff as set out herein to flow into the State of Louisiana. In its control and regulation of the water of Reach IV any adjudication or order rendered by the State of Arkansas or any of its instrumentalities or agencies affecting the terms of this Compact shall not be effective against the State of Louisiana nor any of its citizens or inhabitants until approved by the Commission.

ARTICLE VIII

Apportionment of Water — Reach V

SECTION 8.01. Reach V of the Red River consists of the main stem Red River and all of its tributaries lying wholly within the State of Louisiana. The State of Louisiana shall have free and unrestricted use of the water of this subbasin.

ARTICLE IX

Administration of the Compact

SECTION 9.01. There is hereby created an interstate administrative agency to be known as the "Red River Compact Commission," hereinafter called the "Commission." The Commission shall be composed of two representatives from each Signatory State who shall be designated or appointed in accordance with the laws of each state, and one Commissioner representing the United States, who shall be appointed by the President. The Federal Commissioner shall be the Chairman of the Commission but shall not have the right to vote. The failure of the President to appoint a Federal Commissioner will not prevent the operation or effect of this Compact, and the eight representatives from the Signatory States will elect a Chairman for the Commission.

SECTION 9.02. The Commission shall meet and organize within 60 days after the effective date of this Compact. Thereafter, meetings shall be held at such times and places as the Commission shall decide.

SECTION 9.03. Each of the two Commissioners from each state shall have one vote; provided, however, that if only one representative from a state attends he is authorized to vote on behalf of the absent Commissioner from that state. Representatives from three states shall constitute a quorum. Any action concerned with administration of this Compact or any action requiring compliance with specific terms of this Compact shall require six concurring votes. If a proposed action of the Commission affects existing water rights in a state, and that action is not expressly provided for in this Compact, eight concurring votes shall be required.

SECTION 9.04. (a) The salaries and personal expenses of each state's representative shall be paid by the government that it represents, and the salaries and personal expenses of the Federal Commissioner will be paid for by the United States.

(b) The Commission's expenses for any additional stream flow gauging stations shall be equitably apportioned among the states involved in the reach in which the stream flow gauging stations are located.

(c) All other expenses incurred by the Commission shall be borne equally by the Signatory States and shall be paid by the Commission out of the "Red River Compact Commission Fund." Such fund shall be initiated and maintained by equal payments of each state into the fund. Disbursement shall be made from the fund in such manner as may be authorized by the Commission. Such fund shall not be subject to audit and accounting procedures of the state; however, all receipts and disbursements of the fund by the Commission shall be audited by a qualified independent public accountant at regular intervals, and the report of such audits shall be included in and become a part of the annual report of the Commission. Each state shall have the right to make its own audit of the accounts of the Commission at any reasonable time.

ARTICLE X

Powers and Duties of the Commission

SECTION 10.01. The Commission shall have the power to: (a) Adopt rules and regulations governing its operation and enforcement of the terms of the Compact;

(b) Establish and maintain an office for the conduct of its affairs and, if desirable, from time to time, change its location;

(c) Employ or contract with such engineering, legal, clerical and other personnel as it may determine necessary for the exercise of its functions under this Compact without regard to the Civil Service Laws of any Signatory State; provided that such employees shall be paid by and be responsible to the Commission and shall not be considered employees of any Signatory State;

(d) Acquire, use and dispose of such real and personal property as it may consider necessary;

(e) Enter into contracts with appropriate State or Federal agencies for the collection, correlation and presentation of factual data, for the maintenance of records and for the preparation of reports;

(f) Secure from the head of any department or agency of the Federal or State government such information as it may need or deem to be useful for carrying out its functions and as may be available to or procurable by the department or agency to which the request is addressed; provided such information is not privileged and the department or agency is not precluded by law from releasing same;

(g) Make findings, recommendations or reports in connection with carrying out the purposes of this Compact, including, but not limited to, a finding that a Signatory State is or is not in violation of any of the provisions of this Compact. The Commission is authorized to make such investigations and studies, and to hold such hearings as it may deem necessary for said purposes. It is authorized to make and file official certified copies of any of its findings, recommendations or reports with such officers or agencies of any Signatory State, or the United States, as may have any interest in or jurisdiction over the subject matter. The making of findings, recommendations, or reports by the Commission shall not be a condition precedent to the instituting or maintaining of any action or proceeding of any kind by a Signatory State in any court or tribunal, or before any agency or officer, for the protection of any right under this Compact or for the enforcement of any of its provisions; and

(h) Print or otherwise reproduce and distribute its proceedings and reports.

SECTION 10.02. The Commission shall: (a) Cause to be established, maintained, and operated such stream, reservoir and other gauging stations as are necessary for the proper administration of the Compact;

(b) Cause to be collected, analyzed and reported such information on stream flows, water quality, water storage and such other data as are necessary for the proper administration of the Compact;

(c) Perform all other functions required of it by the Compact and do all things necessary, proper and convenient in the performance of its duties thereunder;

(d) Prepare and submit to the governor of each of the Signatory States a budget covering the anticipated expenses of the Commission for the following fiscal biennium;

(e) Prepare and submit an annual report to the governor of each Signatory State and to the President of the United States covering the activities of the Commission for the preceding fiscal year, together with an accounting of all funds received and expended by it in the conduct of its work;

(f) Make available to the governor or to any official agency of a Signatory State or to any authorized representative of the United States, upon request, any information within its possession;

(g) Not incur any obligation in excess of the unencumbered balance of its funds, nor pledge the credit of any of the Signatory States; and

(h) Make available to a Signatory State or the United States in any action arising under this Compact, without subpoena, the testimony of any officer or employee of the Commission having knowledge of any relevant facts.

ARTICLE XI

Pollution

SECTION 11.01. The Signatory States recognize that the increase in population and the growth of industrial, agricultural, mining and other activities combined with natural pollution sources may lead to a diminution of the quality of water in the Red River Basin which may render the water harmful or injurious to the health and welfare of the people and impair the usefulness or public enjoyment of the water for beneficial purposes, thereby resulting in adverse social, economic, and environmental impacts.

SECTION 11.02. Although affirming the primary duty and responsibility of each Signatory State to take appropriate action under its own laws to prevent, diminish, and regulate all pollution sources within its boundaries which adversely affect the water of the Red River Basin, the states recognize that the control and abatement of the naturally-occurring salinity sources as well as, under certain circumstances, the maintenance and enhancement of the quality of water in the Red River Basin may require the cooperative action of all states.

SECTION 11.03. The Signatory States agree to cooperate with agencies of the United States to devise and effectuate means of alleviating the natural deterioration of the water of the Red River Basin.

SECTION 11.04. The Commission shall have the power to cooperate with the United States, the Signatory States and other entities in programs for abating and controlling pollution and natural deterioration of the water of the Red River Basin, and to recommend reasonable water quality objectives to the states.

SECTION 11.05. Each Signatory State agrees to maintain current records of waste discharges into the Red River Basin and the type and quality of such discharges, which records shall be furnished to the Commission upon request.

SECTION 11.06. Upon receipt of a complaint from the governor of a Signatory State that the interstate waters of the Red River Basin in which it has an interest are being materially and adversely affected by pollution and that the state in which the pollution originates has failed after reasonable notice to take appropriate abatement measures, the Commission shall make such findings as are appropriate and thereafter provide such findings to the governor of the state in which such pollution originates and request appropriate corrective action. The Commission, however, shall not take any action with respect to pollution which adversely affects only the state in which such pollution originates.

SECTION 11.07. In addition to its other powers set forth under this Article, the Commission shall have the authority, upon receipt of six concurring votes, to utilize applicable Federal statutes to institute legal action in its own name against the person or entity responsible for interstate pollution problems; provided, however, sixty (60) days before initiating legal action the Commission shall notify the Governor of the state in which the pollution source is located to allow that state an opportunity to initiate action in its own name.

SECTION 11.08. Without prejudice to any other remedy available to the Commission, or any Signatory State, any state which is materially and adversely affected by the pollution of the water of the Red River Basin by pollution originating in another Signatory State may institute a suit against any individual, corporation, partnership, or association, or against any Signatory State or political or governmental subdivision thereof, or against any officer, agency, department, bureau, district, or instrumentality of or in any Signatory State contributing to such pollution in accordance with applicable Federal statutes. Nothing herein shall be construed as depriving any persons of any rights of action relating to pollution which such person would have if this Compact had not been made.

ARTICLE XII

Termination and Amendment of Compact

SECTION 12.01. This Compact may be terminated at any time by appropriate action of the legislatures of all of the four Signatory States. In the event of such termination, all rights established under it shall continue unimpaired.

SECTION 12.02. This Compact may be amended at any time by appropriate action of the legislatures of all Signatory States that are affected by such amendment. The consent of the United States Congress must be obtained before any such amendment is effective.

ARTICLE XIII

Ratification and Effective Date of Compact

SECTION 13.01. Notice of ratification of this Compact by the legislature of each Signatory State shall be given by the governor thereof to the governors of each of the other Signatory States and to the President of the United States. The President is hereby requested to give notice to the governors of each of the Signatory States of the consent to this Compact by the Congress of the United States.

SECTION 13.02. This Compact shall become effective, binding and obligatory when, and only when:

(a) It has been duly ratified by each of the Signatory States; and

(b) It has been consented to by an Act of the Congress of the United States, which Act provides that:

Any other statute of the United States to the contrary notwithstanding, in any case or controversy:

which involves the construction or application of this Compact;

in which one or more of the Signatory States to this Compact is a plaintiff or plaintiffs; and which is within the judicial power of the United States as set forth in the Constitution of the United States;

and without any requirement, limitation or regard as to the sum or value of the matter in controversy, or of the place of residence or citizenship of, or of the nature, character or legal status of, any of the other proper parties plaintiff or defendant in such case or controversy;

The consent of Congress is given to name and join the United States as a party defendant or otherwise in any such case or controversy in the Supreme Court of the United States if the United States is an indispensable party thereto.

SECTION 13.03. The United States District Courts shall have original jurisdiction (concurrent with that of the Supreme Court of the United States, and concurrent with that of any other Federal or state court, in matters in which the Supreme Court, or other court has original jurisdiction) of any case or controversy involving the application or construction of this Compact; that said jurisdiction shall include, but not be limited to, suits between Signatory States; and that the venue of such case or controversy may be brought in any judicial district in which the acts complained of (or any portion thereof) occur."

History. Acts 1979, No. 201, § 1; A.S.A. 1947, § 9-1601.

15-23-502. Effective date of compact.

The provisions of the compact shall be in full force and effect from and after the effective date of the further ratification of the compact by the States of Oklahoma, Texas, and Louisiana and consented to by the Congress of the United States.

History. Acts 1979, No. 201, § 2; A.S.A. 1947, § 9-1602.

15-23-503. Commissioners.

The two (2) commissioners representing the State of Arkansas as provided by Section 9.01 of the compact ratified by this subchapter shall be designated as follows:

- (1) The Director of the Arkansas Natural Resources Commission or such other state agency as may hereafter succeed to the powers and responsibilities of the Arkansas Natural Resources Commission; and
- (2) Any individual who resides within the basin of the Red River and its tributaries in Arkansas, to be appointed by the Governor with the advice and consent of the Senate and to serve a term of seven (7) years.

History. Acts 1979, No. 201, § 3; A.S.A. 1947, § 9-1603.

Publisher's Notes. The "Arkansas Soil and Water Conservation Commission", as

referenced in subdivision (1) of this section, is now the "Arkansas Natural Resources Commission" as renamed by Acts 2005, No. 1243, § 3 at § 15-20-201.

SUBCHAPTER 6 — WHITE RIVER VALLEY COMMISSION

SECTION.

15-23-601 — 15-23-604. [Repealed.]

15-23-601 — 15-23-604. [Repealed.]

Publisher's Notes. This subchapter, concerning the White River Valley Commission, was repealed by Acts 1997, No. 1218, § 1. The subchapter was derived from the following sources:

- 15-23-601. Acts 1987, No. 1039, § 1.
- 15-23-602. Acts 1987, No. 1039, §§ 2-4; 1989, No. 246, § 1; 1991, No. 786, § 20.
- 15-23-603. Acts 1987, No. 1039, § 4.
- 15-23-604. Acts 1987, No. 1039, § 5.

SUBCHAPTER 7 — BUFFALO NATIONAL RIVER COMMISSION

SECTION.

15-23-701 — 15-23-704. [Repealed.]

15-23-701 — 15-23-704. [Repealed.]

Publisher's Notes. This subchapter, concerning the Buffalo National River Commission, was repealed by Acts 1999, No. 1133, § 2. The subchapter was derived from the following sources:

- 15-23-701. Acts 1989, No. 62, § 1.
- 15-23-702. Acts 1989, No. 62, § 1.
- 15-23-703. Acts 1989, No. 62, § 1.
- 15-23-704. Acts 1989, No. 62, § 1.

SUBCHAPTER 8 — OUACHITA RIVER COMMISSION

SECTION.

- 15-23-801. Legislative intent.
- 15-23-802. Construction of subchapter.
- 15-23-803. Ouachita River Commission created — Powers and duties.

SECTION.

- 15-23-804. Members.
- 15-23-805. Funding.
- 15-23-806. Ouachita River Waterways Project Trust Fund.

Effective Dates. Acts 2003, No. 643, § 51: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003."

15-23-801. Legislative intent.

It is the intent of this subchapter to create the Ouachita River Commission. The commission's purpose is to promote the recreational benefits of the river. Specifically, this subchapter reaffirms the integrity of the river with respect to the existing configuration of the channel and sand bars. No studies shall be undertaken that would, as a premise, allow any modification of the channel bends or sand bars of the river. It is the stated purpose of this subchapter to accomplish an increase in river use without any bend cuts or bend widenings.

History. Acts 1999, No. 1532, § 1.

15-23-802. Construction of subchapter.

This subchapter shall be cumulative and shall not repeal any existing law, nor shall it be deemed to take from any levee, drainage, or other improvement district any power or right the district now has to enter into and perform any agreement or contract with the United States Army Corps of Engineers or other federal agency.

History. Acts 1999, No. 1532, § 2.

15-23-803. Ouachita River Commission created — Powers and duties.

There is created and established the Ouachita River Commission with the following powers, duties, and responsibilities:

(1) To cooperate with the appropriate state and federal agencies for the study, planning, and implementation of needed improvements or projects, or both, to and along the main stem of the Ouachita River in Dallas, Hot Spring, Clark, Ouachita, Calhoun, Union, Bradley, and Ashley Counties, Arkansas;

(2) To review, study, and examine any plan by the State of Arkansas or the federal government, or any agency thereof, for the improvement of the main stem of the Ouachita River in Arkansas and to ascertain the nature and purpose of the improvement, the benefits to be expected therefrom, and the necessity, feasibility, and estimated cost thereof;

(3) To determine the local, nonfederal costs necessary for the construction, operation, and maintenance of any Ouachita River improvement project, including, but not limited to, port and terminal facilities along and upon the main stem thereof;

(4) To delineate the area to be benefited by improvement of the main stem of the Ouachita River; and

(5) To receive and use any federal, state, or private funds, donations, or grants made available for promotion or enhancement of the recreational benefits of the Ouachita River in Dallas, Hot Spring, Clark, Ouachita, Calhoun, Union, Bradley, and Ashley Counties.

History. Acts 1999, No. 1532, § 3; 2001, No. 7, § 1; 2001, No. 314, § 1; 2003, No. 643, § 44.

15-23-804. Members.

(a)(1) The Ouachita River Commission shall be composed of nine (9) members.

(2) The members shall be appointed by the Governor as follows:

(A) One (1) who is a resident and elector of Clark County;

(B) One (1) who is a resident and elector of Ouachita County;

(C) One (1) who is a resident and elector of Calhoun County;

(D) One (1) who is a resident and elector of Union County;

(E) One (1) who is a resident and elector of Bradley County;

(F) One (1) who is a resident and elector of Ashley County;

(G) One (1) who is a resident and elector of Hot Spring County;

(H) One (1) who is a resident and elector of Dallas County; and

(I) One (1) who is the highest-ranking official of the Ouachita River Valley Association and who is a resident of Arkansas.

(3) The Governor's appointment shall be with the advice and consent of the Senate.

(b) Prior to entering upon the Ouachita River Commission's duties, each member of the Ouachita River Commission shall take, subscribe, and file in the Office of the Secretary of State an oath to support the Constitution of the United States and the Constitution of the State of Arkansas and to faithfully perform the duties of the office upon which he or she is about to enter.

(c)(1) Members shall be appointed for seven-year staggered terms to be assigned by lot.

(2) The terms shall commence on September 1 of each year and the first term shall expire on September 1, 2001.

(3) Every year thereafter, one (1) member's term shall expire.

(d) The Ouachita River Commission shall annually select by majority vote one (1) of its members to serve as chair and one (1) to serve as vice chair.

(e) In the event of a vacancy on the Ouachita River Commission for any reason other than expiration of a regular term, the vacancy shall be filled for the unexpired portion of the term by appointment of the

Ouachita River Commission member in subdivision (a)(2) of this section of a person meeting the same qualifications required for initial appointment.

(f) Members of the Ouachita River Commission shall receive no pay for their services, but whenever the General Assembly shall have appropriated funds to the Ouachita River Waterways Project Trust Fund administered by the Arkansas Natural Resources Commission, they may, upon proper application to the Arkansas Natural Resources Commission, be reimbursed for expenses in accordance with § 25-16-902.

History. Acts 1999, No. 1532, § 4;
2001, No. 7, § 2; 2001, No. 314, § 2.

15-23-805. Funding.

The Ouachita River Commission may receive and use any federal, state, or private funds, donations, and grants made available for the study, planning, and implementation of needed improvements or projects, or both, to and along the main stem of the Ouachita River.

History. Acts 1999, No. 1532, § 5.

15-23-806. Ouachita River Waterways Project Trust Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Ouachita River Waterways Project Trust Fund".

(b) This fund shall consist of those moneys approved by the General Assembly and the interest income earned from the investment of funds accruing to the fund.

(c)(1) It may be used for such purposes as may be authorized by law, including, but not limited to, wildlife and recreation purposes and bank stabilization.

(2) The funds shall not be used for bend cuts or bend widenings.

(d)(1) Investment of the funds available shall be by the Treasurer of State in such amounts and in such manner as may be directed by the Ouachita River Commission.

(2) In no event, however, shall the funds be invested for longer than a continuous two-year period.

History. Acts 1999, No. 1532, § 6.

A.C.R.C. Notes. Acts 1999, No. 1532,
§ 6, is also codified as § 19-5-1109.

SUBCHAPTER 9 — ARKANSAS PORT PRIORITY IMPROVEMENT PROGRAM ACT

SECTION.

15-23-901. Title.

15-23-902. Definitions.

SECTION.

15-23-903. Port Priority Improvement
Fund created.

SECTION.

15-23-904. Authority to establish programs.

15-23-905. Port Priority Improvement Program.

SECTION.

15-23-906. Application and award.

15-23-901. Title.

This subchapter shall be known and cited as the “Arkansas Port Priority Improvement Program Act”.

History. Acts 2001, No. 1546, § 1.

15-23-902. Definitions.

As used in this subchapter:

(1) “City” means any city of the first class, any city of the second class, or any incorporated town established by the laws of the State of Arkansas;

(2) “County” means any county in the State of Arkansas;

(3) “Port Priority Improvement Program” means a governmental program to award funds to port authorities to encourage the development of port infrastructure, including the engineering and construction; and

(4) “Public Port Authority” or “port authority” means:

(A) A port authority created under the Metropolitan Port Authority Act of 1961, § 14-185-101 et seq.;

(B) A municipal port authority created under § 14-186-201 et seq.; and

(C) An authority created under the Regional Intermodal Facilities Act, § 14-143-101 et seq.

History. Acts 2001, No. 1546, § 1.

15-23-903. Port Priority Improvement Fund created.

There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Port Priority Improvement Fund”, to consist of the funds or other moneys that may be deposited therein as provided by the General Assembly, and to be used by the Arkansas Waterways Commission for the purpose of providing financial assistance to public port authorities in the manner provided in this subchapter and for development of port infrastructure, including the engineering and construction costs.

History. Acts 2001, No. 1546, § 1.

15-23-904. Authority to establish programs.

(a) The Arkansas Waterways Commission, working in partnership with the Arkansas Economic Development Commission, may establish by rules and regulations the criteria of eligibility for awarding funds to

any public port authority to aid in the development of port infrastructure, including the engineering and construction costs.

(b) The rules and regulations shall be reviewed by the House Committee on Public Transportation and the Senate Committee on Public Transportation, Technology, and Legislative Affairs.

History. Acts 2001, No. 1546, § 1.

15-23-905. Port Priority Improvement Program.

The Arkansas Waterways Commission's rules and regulations for the Port Priority Improvement Program shall, as a minimum:

(1) Provide for the Arkansas Waterways Commission to administer the program authorized under this subchapter;

(2) Require the commission to take the necessary actions to ensure that the funds are used for the purposes for which they are to be awarded and that they are expended in accordance with all state laws and local ordinances and procedures and regulations;

(3) Specify:

(A) The procedure for receiving applications;

(B) Who is eligible to apply;

(C) The goals and objectives of the program for public port infrastructure development; and

(D) The procedures for awarding funds;

(4) Require the port authority to file a performance review report with the commission for three (3) consecutive years following completion of the project comparing actual benefits with the projected benefits associated with the project as stated in the application for funding;

(5) Require that each public port authority provide matching funds equal to at least ten percent (10%) of the estimated cost of the port infrastructure project for which an application is made;

(6) Provide that eligible port infrastructure development projects shall be only for capital improvement projects and shall not be used for any routine maintenance or operational expenses; and

(7) Provide that no individual port shall receive more than twenty percent (20%) of the total amount available for public port infrastructure development projects.

History. Acts 2001, No. 1546, § 1.

15-23-906. Application and award.

(a) The Arkansas Waterways Commission shall promulgate the application format to be used in applying for funding through the Port Priority Improvement Program.

(b) All applications shall be submitted as required by the establishing rules and regulations.

(c) After receipt of the application, the commission, working in partnership with the Arkansas Economic Development Commission, shall review the applications and shall select the applications by rank

order which will best fulfill the goals and objectives of the program as described by the program's rules and regulations. The commission shall then make awards to the applicants based on their rank order on the list of applications.

(d) The projects may be funded until all funds available for this purpose have been expended.

History. Acts 2001, No. 1546, § 1.

CHAPTER 24

FLOOD CONTROL

SECTION.

- 15-24-101. Construction.
- 15-24-102. Commission powers and duties generally.
- 15-24-103. Rules for taking evidence.
- 15-24-104. Rights of levee districts and drainage districts.
- 15-24-105. Cooperation with United States — Applications for allotment or assistance.

SECTION.

- 15-24-106. Compacts with other states.
- 15-24-107. Eminent domain.
- 15-24-108. Receipt of federal or other funds — State Flood Control Fund.
- 15-24-109. Accreditation of floodplain administrators.

Preambles. Acts 1937, No. 212 contained a preamble which read: "While the Fifty-first General Assembly of the State of Arkansas is now in session, various sections of the State are being visited by overflows of our streams, causing floods of water to descend upon person and property, creating extreme hardships and irreparable damages to homes, unbearable suffering to our citizens and their families, cessation of instruction of children through the closing of schools, liability of disease, extreme interruption to social life, closing of our highway arteries and the permanent loss of our soils through erosion.

"The Fifty-first General Assembly, recognizing that there should be action looking toward the permanent prevention of this suffering and these losses at present occurring and which occur annually, and having a sincere desire to provide ways and means whereby relief, permanent in nature, may be afforded, resolve as follows:

"Whereas, the valleys of Arkansas, rich in fertility, have been subjected to vast losses of life and property during the past several decades, due to the overflows of streams; and

"Whereas, great quantities of its most productive soils are now deposited in the beds of the Mississippi River and the Gulf of Mexico, to the extent that losses resulting from erosion have become intolerable; and

"Whereas, the great losses of life and property which have heretofore been accepted as an act of the public enemy which could not be avoided and no concentration of effort looking toward prevention rather than reconstruction has been perfected; and

"Whereas, all of the area concerned with further relief is subject to an extensive burden in the form of improvement taxes, which burden was imposed upon them in an effort to protect their lives, homes, and property; and

"Whereas, the federal Government is seeking the cooperation of the states in this great program...."

Effective Dates. Acts 1937, No. 212, § 20: approved Mar. 8, 1937. Emergency clause provided: "It is hereby found and declared to be a fact that in the interest of the public safety, convenience and welfare there is an urgent need to mitigate or eliminate the destruction in loss of life and property resulting from the periodic

floods in the stream basins of this State and the Board created herein shall be regarded as performing a Governmental function in carrying out the provisions of this act; therefore, this act being necessary for the preservation of the public

peace, health and safety of the people of the State of Arkansas, an emergency is declared to exist and this act shall be in force and effect from and after its passage."

RESEARCH REFERENCES

Am. Jur. 50 Am. Jur. 2d, Levees, § 1 et seq.

C.J.S. 52A C.J.S., Levees, § 1 et seq.

15-24-101. Construction.

(a) Nothing in this subchapter shall be construed to repeal any provisions of the existing levee or drainage laws of the state, nor to curtail the power of any governing board of any drainage or levee district to contract directly with the federal government or any of its agencies for federal aid, loans, or gifts.

(b) The districts are granted power to provide the necessary rights-of-way and to take any other steps or any other undertakings that may be required of them by the federal government to become beneficiaries of any drainage, levee, or flood control works proposed to be constructed by the federal government.

History. Acts 1937, No. 212, § 19; Pope's Dig., § 12194; A.S.A. 1947, § 9-811.

15-24-102. Commission powers and duties generally.

(a) It shall be the duty of the Arkansas Natural Resources Commission to:

(1) Study, consider, and determine upon a sound public policy with regard to flood prevention, flood control, and flood protection;

(2) Compile figures and other information on current and previous flood damage and scientific data relative to the recurrence of floods such as rainfall, runoff, flowing channels, stream obstruction, existing facilities for storing surplus waters, and existing protection works; and

(3) Accredite persons having requisite knowledge in floodplain management and in minimization and prevention of flood hazards and losses.

(b) The commission shall have the power to:

(1) Clean out, widen, deepen, straighten, change, alter, divert, or eliminate in whole or in part the course or terminus of any natural or artificial water streams;

(2) Shape or protect stream banks for the improvement of hydraulic efficiency in the discharge of flood waters;

(3) Acquire lands necessary for reservoir dam sites and lines;

(4) Construct, take over, maintain, and operate dams, reservoirs, holding or impounding basins, flood gates, revetments, or any other works and improvements deemed necessary to prevent floods and to control, preserve, and regulate the flow of rivers and streams;

(5) Construct dikes, levees, or other artificial barriers to protect against inundation of property when deemed advisable by the commission; and

(6) As an incident to the foregoing, relocate or revise bridges, buildings, roads, streets, railroads, service lines and connections of public service utilities, and fences and do generally all things necessary for the fulfillment of the purposes of this subchapter.

(c) The commission shall have the power to acquire by donation, lease, purchase, or condemnation and to hold or own in the name of the state real and personal property, easements, and the public works erected and constructed under the authority of this subchapter except that:

(1) None of the work, improvements, or construction provided for in the preceding portion of this section or in any other portion of this subchapter shall be done, undertaken, or performed within the boundary limits of any levee or drainage district;

(2) This subchapter shall not confer upon the commission or other authority any jurisdiction, control, supervision, or authority whatsoever over the lands within the boundaries of any levee or drainage district now existing or hereafter organized; and

(3) Further, the commission shall not have any:

(A) Control, authority, or jurisdiction over any such levee or drainage district, nor over the directors or commissioners of any levee or drainage districts, nor lake lands within the boundaries of any levee or drainage district as aforesaid;

(B) Authority to affect the existence of any levee or drainage district in any manner; or

(C) Power to require reports from districts nor any supervision or control over them;

(4)(A) However, any levee or drainage district shall have the option upon the voluntary action of its governing board to make contracts with the commission and to make compacts and contracts with the United States Government or any of its agencies and may thereby voluntarily grant to the commission general or special powers as drainage or levee districts may deem proper.

(B) The grant shall be limited specifically to the matters and things voluntarily agreed upon by the governing board of the districts.

(C) In order to become effective, the contract with the state commission shall be approved by the county court or judge in vacation, if the district is in one (1) county, and by the circuit court of the county of domicile or the judge thereof in vacation, if in more than one (1) county, and recorded on the court records.

History. Acts 1937, No. 212, §§ 10, 11; §§ 9-801, 9-803; Acts 1995, No. 1296, Pope's Dig., §§ 12185, 12186; A.S.A. 1947, § 53; 2003, No. 745, § 4.

CASE NOTES

Levee and Drainage Districts.

Although drainage and levee districts have authority under this subchapter to make contracts by which federal government is to construct essential levees to protect drainage projects, drainage districts are to acquire all necessary rights of way for the levees and pay incidental damages arising out of their construction.

Drainage Dist. v. Cornish, 198 Ark. 857, 131 S.W.2d 938 (1939).

District had right to use its surplus tax collection and revenues for the purchase of rights of way for federal control projects without obtaining authority so to do from the county court. *Drainage Dist. v. Cornish*, 198 Ark. 857, 131 S.W.2d 938 (1939).

15-24-103. Rules for taking evidence.

The Arkansas Natural Resources Commission shall prescribe the rules of procedure for taking of evidence in all matters that may come before it in the investigations, preparations, and hearings of matters pertaining to its duties and powers as the commission.

History. Acts 1937, No. 212, § 9; Pope's Dig., § 12184; A.S.A. 1947, § 9-802.

15-24-104. Rights of levee districts and drainage districts.

(a) The following rights of any and all levee districts or drainage districts are expressly declared, ratified, and confirmed:

(1) The right to make compacts and contracts with the United States Government or with any agency of that government or created by that government, to borrow money and repay it, and to accept and receive any and all federal moneys, grants, contributions, gratuities, or loans, or aid of any nature made available by the United States Government or by any of its agencies or instrumentalities; and

(2) The right of any and all levee districts or drainage districts to refinance their indebtedness in cooperation with any and all applicable governmental agencies and the right to proceed in pursuance of any insolvency statute or bankruptcy act adopted by the Congress or by the State of Arkansas.

(b)(1) Nothing in this subchapter shall be construed to require the commission to approve or pass upon any such proceedings or bankruptcy or insolvency proceedings or litigation of any nature affecting levee districts or drainage districts.

(2) Each and every drainage district or levee district may proceed with any and all refinancing and refunding plans, insolvency and bankruptcy proceedings, or either, and any and all litigation with like effect as if the Arkansas Natural Resources Commission had not been created.

History. Acts 1937, No. 212, § 12; Pope's Dig., § 12187; A.S.A. 1947, § 9-804.

CASE NOTES

Federal Contracts.

Although drainage and levee districts have authority under this subchapter to make contracts by which federal government is to construct essential levees to protect drainage projects, drainage districts are to acquire all necessary rights of way for the levees and pay incidental damages arising out of their construction.

Drainage Dist. v. Cornish, 198 Ark. 857, 131 S.W.2d 938 (1939).

District had right to use its surplus tax collection and revenues for the purchase of rights of way for federal control projects without obtaining authority so to do from the county court. Drainage Dist. v. Cornish, 198 Ark. 857, 131 S.W.2d 938 (1939).

15-24-105. Cooperation with United States — Applications for allotment or assistance.

(a) The Arkansas Natural Resources Commission is authorized and empowered on behalf of the state to:

(1) Cooperate with the United States Department of Defense in every way contemplated by any of the acts of Congress passed in connection with flood control on any of the streams in Arkansas; and

(2) Make necessary application for allotment or assistance from the federal government, to submit all project statements, surveys, plans, specifications, and estimates and other reports or information required by the constituted federal authority, and to enter into all necessary contracts with the proper federal authorities in order to secure the full cooperation of the United States Government and the benefits of all present and future allotments in aid of flood control.

(b)(1) However, the jurisdiction and authority of the commission shall not extend to the works, improvements, nor to the territory embraced within any levee district or drainage district now existing or hereafter organized.

(2) All of the limitations and reservations in favor of such districts apply as set out in § 15-24-102(c).

(3)(A) Any levee district or drainage district may voluntarily contract with the United States Government or any of its agencies of whatsoever nature and may contract voluntarily with the commission created in this subchapter, subject to court approval and recordation as set out in § 15-24-102, to the extent only as the governing board of each individual levee district or drainage district may deem proper.

(B) This subchapter shall not require approval by the commission of any application, petition, contract, improvements, legal proceedings, or any other proceedings whatsoever as to the territory within the boundaries of any levee district or drainage district or to any official act of any district.

History. Acts 1937, No. 212, § 13; Pope's Dig., § 12188; A.S.A. 1947, § 9-805.

Cross References. Distribution of federal funds received for lease of lands for flood control purposes, § 19-7-403.

CASE NOTES

Levee and Drainage Districts.

Although drainage and levee districts have authority under this subchapter to make contracts by which federal government is to construct essential levees to protect drainage projects, drainage districts are to acquire all necessary rights of way for the levees and pay incidental damages arising out of their construction.

Drainage Dist. v. Cornish, 198 Ark. 857, 131 S.W.2d 938 (1939).

District had right to use its surplus tax collection and revenues for the purchase of rights of way for federal control projects without obtaining authority so to do from the county court. Drainage Dist. v. Cornish, 198 Ark. 857, 131 S.W.2d 938 (1939).

15-24-106. Compacts with other states.

The Arkansas Natural Resources Commission is authorized, within the limitations of this subchapter, to enter into compacts with one (1) or more states under any act or resolution of Congress, subject to the reservations contained herein, in behalf of the levee or drainage district.

History. Acts 1937, No. 212, § 14; Pope's Dig., § 12189; A.S.A. 1947, § 9-806.

15-24-107. Eminent domain.

(a) The Arkansas Natural Resources Commission, when necessary for the purpose of this subchapter, shall have a dominant right of eminent domain over the right of eminent domain of railroads, telegraph, telephone, gas, water power, and other companies and corporations and over counties, townships, cities, and villages.

(b) In the exercise of this right, due care shall be taken to cause no unnecessary damage to other public utilities.

(c)(1) The commission shall also have the right to condemn for the use of any project any land or property necessary for the purpose of this subchapter and appropriate the land or property in the same manner as lands, rights-of-way, and easements are acquired by the Arkansas State Highway and Transportation Department.

(2) No power of eminent domain nor appropriation shall exist in the commission over any lands or property within the boundaries of any levee or drainage district now existing or hereafter organized.

(3) Nor shall the powers of eminent domain vested in any levee or drainage district be limited in any manner by this subchapter unless by the voluntary consent of the levee or drainage district through its governing board by contract, to be approved and recorded in the manner provided in this chapter.

History. Acts 1937, No. 212, § 15; Pope's Dig., § 12190; A.S.A. 1947, § 9-807.

15-24-108. Receipt of federal or other funds — State Flood Control Fund.

(a) The Arkansas Natural Resources Commission is authorized to receive on behalf of the State of Arkansas any or all federal moneys, grants, contributions, gratuities, or loans available for territory and projects within the jurisdiction of the commission or hereafter made available by the United States Government or any of its agencies or instrumentalities for flood control work and improvement under such rules and regulations not inconsistent with the provisions of this chapter as may be provided by laws of Congress or any federal agency or instrumentality and to receive donations, contributions, and gratuities from any other source and to pay them over to the Treasurer of State.

(b)(1) It shall be the duty of the Treasurer of State to set up a fund known as the "State Flood Control Fund", and all money shall be placed in the fund by the Treasurer of State.

(2)(A) The fund shall not be used for any purpose except the purposes set forth in this subchapter.

(B) Provided, there is reserved to all levee or drainage districts the authority and right to receive on behalf of districts any and all federal moneys, grants, contributions, gratuities, loans, or other governmental aid whatsoever that may be applicable to the projects, improvements, or territory within any levee or drainage district.

(c) In all matters, districts may deal directly with the United States Government and with its agencies or any of them without the approval, consent, or supervision of the commission and without being subject to its jurisdiction to any extent whatsoever, except that levee or drainage districts may voluntarily contract with the commission by contract to be approved and recorded as set out in this chapter.

History. Acts 1937, No. 212, § 16; Pope's Dig., § 12191; A.S.A. 1947, § 9-808.

15-24-109. Accreditation of floodplain administrators.

(a)(1) In determining accreditation standards for floodplain administrators, the Arkansas Natural Resources Commission may consider an applicant's knowledge, experience, skills, and training in floodplain management and in minimization and prevention of flood hazards and losses.

(2) The accreditation standards may include:

(A) Passage of an examination;

(B) Completion of approved training; or

(C) Certification by a nationally recognized floodplain management organization.

(b) Continuing training may be required for persons who want continued accreditation.

(c) The commission may charge accreditation fees in amounts up to the following:

- (1) Original accreditation, thirty dollars (\$30.00);
- (2) Annual renewal of accreditation, twenty dollars (\$20.00); and
- (3) Late fee for renewal after thirty (30) days, fifteen dollars (\$15.00).

(d)(1) Accreditation fees collected are cash funds and shall not be deposited in the State Treasury.

(2) The cash funds shall be held and applied by the commission solely for the uses under this subchapter.

(3) The cash funds shall not be deemed to be a part of the State Treasury for any purpose, including, without limitation, the provisions of:

- (1) Arkansas Constitution, Article 5, § 29;
- (2) Arkansas Constitution, Article 16, § 12;
- (3) Arkansas Constitution, Amendment 20; or
- (4) Any other constitutional or statutory provision.

History. Acts 2003, No. 745, § 5.

CHAPTERS 25-29

[Reserved]

SUBTITLE 3. FOREST RESOURCES

CHAPTER 30

GENERAL PROVISIONS

[Reserved]

CHAPTER 31

ARKANSAS FORESTRY COMMISSION

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ASSISTANCE TO PRIVATE OWNERS.

Publisher's Notes. Acts 1985, No. 11, § 1, authorized the State Forestry Department, upon resolution adopted by the State Forestry Commission, to acquire from the Arkansas Nature Conservancy title to land known as the "Holland Bottom," located near Jacksonville, Arkansas. Section 2 of that act directed the State

Forestry Commission, in cooperation with the Arkansas State Game and Fish Commission and the Arkansas Natural Heritage Commission, to develop a plan for the use, preservation, and management of the Holland Bottom properties, and assigned some management authority and responsibilities to various state agencies.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 15-31-101. Creation.
- 15-31-102. Members.
- 15-31-103. Organization.
- 15-31-104. State Forester.
- 15-31-105. Personnel.
- 15-31-106. Functions, powers, and duties.
- 15-31-107. Employment of relatives.
- 15-31-108. State Forestry Fund.
- 15-31-109. Receipt and use of grants and aids.

SECTION.

- 15-31-110. Uniform allowance.
- 15-31-111. Fees.
- 15-31-112. Enforcement of Poison Spring State Forest Regulations.
- 15-31-113. Legislative findings — Purpose.
- 15-31-114. Classification of fines.
- 15-31-115. Classification of revenues.
- 15-31-116. Donation of fire control or fire rescue equipment.

Preambles. Acts 1991, Nos. 375 and 384 contained a preamble which read:

“Whereas, the General Assembly of the State of Arkansas determines that Arkansas’ forests are nationally and internationally significant; and

“Whereas, Arkansas’ forests provide habitat for thousands of animal and plant species many of which are rare or found only within the boundaries of the state; and

“Whereas, the bottom land hardwood forests of the state are critical to the survival of waterfowl populations; and

“Whereas, Arkansas forests are of great economic value and have a gross product of \$1.6 billion annually and provide employment for nearly 40,000 Arkansans in the forest products industry earning up to \$758 million each year; and

“Whereas, destruction of the earth’s forests will lead to the extinction of millions of species; and

“Whereas, a dramatic increase in atmospheric gases, particularly carbon dioxide, may raise global temperature 2 degrees to 10 degrees F in the next century; and

“Whereas, trees remove carbon dioxide from the atmosphere, provide habitat for species, purify air by removing dust and other particles, produce oxygen, prevent erosion, reduce flooding, reduce energy use, provide food and shade, create beauty and hide unsightly areas created by man, and literally keep life going on our planet.”

Effective Dates. Acts 1931, No. 234, § 4: effective on passage.

Acts 1953, No. 42, § 13: approved Feb. 9, 1953. Emergency clause provided: “It

has been found and is hereby declared by the General Assembly that the inadequacy of the state’s program of fire control with respect to forest trees was graphically demonstrated in the immediate past months when losses, both actual and potential, by forest fires amounted to untold millions of dollars, and threatened the lives of many people living within the fire areas; and that only the provisions of this act will provide funds in amounts sufficient to provide comprehensive protection of forest trees, and reduce the incidence of losses as aforesaid in the future. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage.”

Acts 1955, No. 99, § 8: July 1, 1955.

Acts 1959, No. 150, § 3: Mar. 3, 1959. Emergency clause provided: “It is hereby found and determined by the General Assembly that many hourly wage employees of the State Forestry Department are not being paid a subsistence wage; that the payment of an adequate wage is essential to preserving employee morale and for the promotion of efficiency; and, that only by the immediate passage of this act may said situation be corrected. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1975, No. 415, § 11: July 1, 1975. Emergency clause provided: “It is hereby found and determined by the Seventieth

General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this act on July 1, 1975 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1975 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1975."

Acts 1975 (Extended Sess., 1976), No. 1195, § 8: Feb. 11, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in Extended Session, that for the Division of Forestry to provide an effective to the citizens of Arkansas that this act is deemed necessary. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1983, No. 201, § 16: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1983, No. 691, § 19: effective on close of business June 30, 1983. Emergency clause provided: "It is hereby found

and determined by the General Assembly that the various boards, commissions, departments, agencies, and services transferred to the Department of Commerce under the provisions of Act 38 of 1971, as amended, could perform their duties more efficiently as independent agencies; that the agencies and services consolidated within the Department of Commerce under Act 38 of 1971 are so diverse in their purposes and duties that it is difficult for the Administrator of said Department to exert leadership in the operation of such agencies and programs; and, that the abolishment of the Department of Commerce and its central services would result in financial savings which could be best used for the support and operation of other essential services of government, and that the immediate passage of this Act is necessary to provide for the repeal of the Department of Commerce and for the transition of the various departments, agencies, boards, commissions, and programs and services within said Department to an independent status, as provided herein. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect as follows: Section 15 of this Act shall be effective from and after March 1, 1983, and the remaining provisions of this Act shall be effective on the close of business June 30, 1983 and thereafter."

Acts 1985, No. 464, § 5: Mar. 21, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that there still exists an obsolete law prohibiting the employment at the University of Arkansas of persons related within the fourth degree of consanguinity to any member of the Board of Trustees; that such law no longer comports to the public policy of this State and should be immediately modified to avoid inequitable treatment of such persons; that this Act will eliminate the inequity and should therefore be given immediate effect. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1024, § 3: Apr. 14, 1987. Emergency clause provided: "It is hereby

found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1195 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989 (1st Ex. Sess.), No. 183, § 17: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1991, No. 441, § 22: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1991, No. 674, § 5: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the uniform allowance for State Forestry Commission employees is inadequate; that this Act increases the uniform allowance; that this Act should go into effect at the beginning of the next fiscal year; and that this Act may not go into effect at the beginning of the next fiscal year unless this emergency clause is adopted. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, Nos. 865 and 1112, § 7: Apr. 2, 1993, and Apr. 13, 1993, respectively. Emergency clauses provided: "It is hereby found and determined by the General Assembly that the State Forestry Commission is in need of additional funds in order to continue and improve its statewide program of forest fire protection and to defray the costs of its programs for the development, protection, and preservation of the forest lands in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 253, § 9: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly that the consolidation of the Forestry Commission's Trust Funds is essential to be in force at the beginning of the state fiscal year and that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the trust funds in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond

July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs and would impede the Forestry Commission from complying with the policy of the State of Arkansas as set out in Arkansas Code § 19-4-509. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

15-31-101. Creation.

(a) There is created the Arkansas Forestry Commission.

(b) It shall be the mission of the commission to promote forest resource health, conservation, and stewardship.

(c) The commission shall cooperate with federal and state agencies, forest landowners, residents, and organizations in the prevention, detection, and suppression of wildland fires, in the control of forest insects and diseases, in the growth and distribution of forest tree seedlings, and in providing technical assistance and information relating to the most scientific methods of timber harvesting, reforestation, and forest resource protection and development, to the end that the forests throughout the state may be perpetuated.

History. Acts 1953, No. 42, § 1; 1955, No. 99, § 1; 1959, No. 232, § 1; A.S.A. 1947, § 9-701.1; Acts 1999, No. 27, § 1.

Publisher's Notes. Acts 1931, No. 234 established a State Forestry Commission. Acts 1945, No. 138 abolished the State Forestry Commission and transferred its duties to the Division of Forestry and Parks of the Arkansas Resources and Development Commission. Acts 1953, No. 42, § 4, abolished the Division of Forestry and Parks of the Arkansas Resources and Development Commission and transferred its powers and duties relating to

forestry and parks to a newly created State Forestry Commission. Acts 1971, No. 38, § 16 transferred the powers and duties of the State Forestry Commission, by a Type 1 transfer, to the Department of Commerce (abolished) to be located in the Division of Forestry. Acts 1983, No. 691, § 7, separated the State Forestry Commission from the Department of Commerce and established the commission as an independent agency, functioning as it did prior to its transfer to the Department of Commerce.

15-31-102. Members.

(a)(1) The Arkansas Forestry Commission shall consist of nine (9) members to be appointed by the Governor by and with the advice and consent of the Senate from resident electors of this state having a long-standing interest in the forest resources of Arkansas.

(2)(A) Three (3) of the nine (9) members appointed to the commission shall be small tree farmers.

(B) As used in this section, "small tree farmer" means a person owning timber acreage of two hundred fifty (250) acres or less.

(3) Each congressional district shall be represented on the commission.

(b) The term of office shall commence on January 15 following the expiration date of the prior term and shall end on January 14 of the ninth year following the year in which the term commenced.

(c)(1) Any vacancies arising in the membership of the commission for any reason other than expiration of the regular terms for which the members were appointed shall be filled by appointment by the Governor.

(2) Appointments shall be thereafter effective until the expiration of the regular terms, subject, however, to the confirmation of the Senate when it is next in session.

(d) Before entering upon their respective duties, each member of the commission shall take and subscribe and file in the Office of the Secretary of State an oath to support the Constitution of the United States and the Constitution of the State of Arkansas and to faithfully perform the duties of the office upon which he or she is about to enter.

(e) Members of the commission shall not receive compensation for their services but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1953, No. 42, §§ 1-3, 6; 9-701.6; Acts 1997, No. 250, § 110; 1999, 1955, No. 99, § 1; 1959, No. 232, § 1; No. 27, § 2.
A.S.A. 1947, §§ 9-701.1 — 9-701.3,

15-31-103. Organization.

(a) From time to time, the Arkansas Forestry Commission shall select from its membership a chair and a vice chair.

(b) The State Forester provided for in § 15-31-104 shall be, ex officio, Secretary of the Arkansas Forestry Commission but shall have no vote on matters coming before it.

(c) The commission shall adopt and may modify rules for the conduct of its business and shall keep a record of its transactions, findings, and determinations. The record shall be public.

(d) The rules shall provide for regular quarterly meetings and for special meetings at the call of the Chair of the Arkansas Forestry Commission or of the Vice Chair of the Arkansas Forestry Commission if he or she is for any reason the acting chair, either at his or her own instance or upon the written request of at least five (5) members.

(e)(1) A quorum shall consist of not less than five (5) members present at any regular or special meeting.

(2) A majority affirmative vote of that number shall be necessary for the disposition of any business.

History. Acts 1953, No. 42, § 6; A.S.A. 1947, § 9-701.6.

15-31-104. State Forester.

The State Forester shall:

(1) Be employed by the Arkansas Forestry Commission, with the approval of the Governor, and shall serve at the pleasure of the Governor;

(2)(A) Administer the provisions of this chapter and the rules, regulations, and orders established under this chapter.

(B)(i) The commission, by adopted resolution, may delegate to the State Forester any of the powers or duties vested in or imposed upon it by this chapter.

(ii) Such delegated powers and duties may be exercised by the State Forester in the name of the commission;

(3) Be a person who shall:

(A) Have earned at a minimum a bachelor's degree in forestry from an accredited, four-year program at an institution of higher education; and

(B) Have not less than three (3) years' practical administrative and field experience in forestry;

(4) Be custodian of all property held in the name of the commission and shall be, ex officio, the disbursing agent of all funds available for its use; and

(5)(A) Furnish bond to the state, with a corporate surety thereon, in the penal sum of twenty-five thousand dollars (\$25,000), conditioned that he or she will faithfully perform his or her duties of employment and properly account for all funds received and disbursed by him or her.

(B) An additional disbursing agent's bond shall not be required of the State Forester.

(C) The bond shall be filed with the Secretary of State and an executed counterpart thereof shall be filed with the Auditor of State.

History. Acts 1953, No. 42, § 7; 1983, No. 691, § 7; A.S.A. 1947, §§ 9-701.1a, 9-701.7; Acts 1995, No. 136, § 2; 1995, No. 138, § 2.

A.C.R.C. Notes. The operation of subdivision (5) of this section was suspended by adoption of a self-insured fidelity bond program for state officers, officials, and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. Subdivision (5) of this section may again become effective upon cessation of coverage under that program. See § 21-2-703.

Acts 1995, Nos. 136 and 138, § 1, provided: "The General Assembly has de-

termined that, pursuant to Arkansas Forestry Commission policy, county foresters and district foresters employed by the Arkansas Forestry Commission are required to have earned the minimum of a bachelor's degree in forestry from an accredited, four-year program at an institution of higher education. The General Assembly has further determined that the State Forester should also be required to have earned at a minimum a bachelor's degree in forestry from an accredited, four-year program at an institution of higher education."

15-31-105. Personnel.

(a) Subject to the approval of the Arkansas Forestry Commission, the State Forester shall employ such assistants and other personnel as are,

in his or her opinion, necessary to properly administer the provisions of this chapter.

(b)(1) Notwithstanding his or her primary responsibility, the State Forester may designate one (1) of his or her assistants to receive and disburse funds of the commission.

(2)(A) The assistant so designated shall be required to furnish bond with a corporate surety thereon in an amount as determined by the State Forester.

(B) This bond, together with bonds the State Forester requires of other employees, shall be filed in the offices of the commission.

(C) The premiums on all bonds shall be paid by the commission.

History. Acts 1953, No. 42, § 7; 1959, No. 150, § 1; A.S.A. 1947, §§ 9-701.7, 9-737; Acts 2005, No. 78, § 1. **Amendments.** The 2005 amendment repealed (c).

15-31-106. Functions, powers, and duties.

(a) The functions, powers, and duties of the Arkansas Forestry Commission shall be to:

(1) Cooperate with the Secretary of Agriculture or the secretary's authorized agent, with the Dale Bumpers College of Agricultural, Food and Life Sciences and School of Forest Resources of the University of Arkansas System, with the Arkansas Economic Development Council, with other state agencies, and with farmers, forest owners, and other residents and organizations of the state to achieve the mission of the Arkansas Forestry Commission;

(2) Formulate and put into effect policies, plans, and reasonable rules and regulations as may be necessary to the accomplishment of the purpose stated in subdivision (a)(1) of this section;

(3) Submit annually to the Governor a report of its expenditures, accomplishments, and plans for further work;

(4) Assemble and publicize all available information pertinent to industrial opportunities in forestry, both in respect to particular sections and the state as a whole, including the varieties of trees and the products producible therefrom, the power and water resources, transportation facilities, available markets, labor supply, and industrial sites, all to the end of encouraging both the establishment of new industrial enterprises utilizing forest resources and the expansion of existing enterprises;

(5) Assist private landowners, and when called upon, the agency of state having control of the state park system, in managing their timber under approved forestry practices;

(6) Furnish educational information in forestry matters for landowners and timber processors, and civic, school, and other interested groups, including the preparation and dissemination, through various available media, of information relating to fire prevention and control, detection and control of disease and insect infestation, and approved methods of timber harvesting and artificial reforestation;

(7) Originate and conduct research in forestry matters and cooperate with other agencies, both public and private, in any such projects;

(8) Purchase, lease, rent, or sell and receive bequests or donations of any real, corporeal, or personal property, and, when necessary to properly carry out its functions, to acquire any real property by the exercise of its right of eminent domain, such right being vested in the Arkansas Forestry Commission;

(9) Contract and be contracted with; and

(10) Take such other action, not inconsistent with law, as it may deem necessary or desirable to carry out the intent and purposes of this chapter.

(b)(1) The Arkansas Forestry Commission shall also have and be subject to all other functions, powers, and duties as by this chapter are conferred and imposed upon it.

(2) For the purpose of regulating its own procedure and carrying out its transferred or newly provided functions, it shall have the authority, from time to time, to make and amend and enforce all reasonable rules or regulations not inconsistent with law which will aid in the performance of any of the functions, powers, or duties conferred or imposed upon it by law.

History. Acts 1931, No. 234, § 2; Pope's Dig., § 12196; Acts 1953, No. 42, §§ 4, 5; 1955, No. 99, § 2; 1963, No. 249, § 3; A.S.A. 1947, §§ 9-701, 9-701.4, 9-701.5; Acts 1999, No. 27, § 3.

A.C.R.C. Notes. Acts 2007, No. 1242, § 70 provides: "The Arkansas Forestry Commission is authorized to charge fees to federal agencies and other states to reimburse the Commission for expenditures made on behalf of these governmental units. These fees shall be deposited into the State Forestry Fund in the State Treasury as a refund to expenditure."

"The provisions of this section shall be in effect only from July 1, 2007 through June 30, 2009."

Cross References. Authority to adjust boundaries of fire protection district, § 14-284-125.

Failure of employees of commission to attempt to secure arrest and conviction of violators of fire laws a misdemeanor, § 5-38-310.

Fire laws, employees of commission to have powers of peace officers, § 20-22-301.

15-31-107. Employment of relatives.

(a) No employee of the Arkansas Forestry Commission shall be prohibited from supervising, working under the supervision of, or working with any person to whom he or she is related by affinity or consanguinity.

(b) No employee of the commission who begins employment on or after July 1, 1989, shall supervise or work under the supervision of any person to whom he or she is related within the third degree of affinity or consanguinity.

History. Acts 1985, No. 464, § 3; A.S.A. 1947, § 9-743; Acts 1989 (1st Ex. Sess.), No. 183, § 13; 1991, No. 441, § 13.

15-31-108. State Forestry Fund.

There is created and established in the State Treasury a fund which shall be designated and known as the "State Forestry Fund". All moneys from whatever source received and deposited in the fund shall be used exclusively by the Arkansas Forestry Commission in carrying out its respective functions and duties as provided by law.

History. Acts 1935, No. 85, § 6; Pope's No. 99, § 3; A.S.A. 1947, §§ 9-701.8, 41-Dig., § 3054; Acts 1953, No. 42, § 8; 1955, 1956; Acts 1997, No. 132, § 2.

15-31-109. Receipt and use of grants and aids.

(a)(1) The Arkansas Forestry Commission is authorized and empowered to receive any moneys arising from federal means, grants, contributions, gratuities, or reimbursements or contributions, grants, or gratuities donated by private persons or corporations, and all moneys so received shall be deposited in the State Treasury to the credit of the State Forestry Fund unless provision shall have otherwise been made by the respective federal agencies, private persons, or corporations furnishing the funds.

(2) However, in the event the General Assembly fails to appropriate any moneys for the use of the commission or in the event the specified use of any moneys precludes its deposit in the State Treasury, the commission is authorized and empowered to establish accounts in its name in one (1) or more banks and to deposit therein and withdraw therefrom any moneys for the purposes for which granted, donated, or received.

(b) Subject to the provisions of subsection (a) of this section, all moneys set aside in banks for the purposes stated in subdivision (a)(2) of this section shall be credited to the fund in the State Treasury.

History. Acts 1953, No. 42, § 11; 1955, No. 99, § 5; A.S.A. 1947, § 9-701.10.

15-31-110. Uniform allowance.

(a) The Arkansas Forestry Commission is authorized to establish a Uniform Allowance Program for certain staff and field employees.

(b)(1) An initial maximum allowance of four hundred dollars (\$400) may be paid to those designated new employees during their first year of employment and after satisfactory completion of an initial probationary period of six (6) months.

(2)(A) A maximum allowance of three hundred dollars (\$300) may be paid to those other designated employees for replacement or maintenance of uniforms.

(B) Uniform allowance will be dependent upon available funds, not to exceed established maximums.

(c)(1) The commission shall determine what is to constitute the commission uniform.

(2) However, the uniform shall include a badge and identification card bearing the words "Arkansas Forestry Commission", a full-face picture of the person to whom the badge and identification card is issued, and such other information as the commission shall require.

(3) All persons issued such a badge and identification card shall wear, carry, or display it at such times and places as shall be designated, as required by the commission.

History. Acts 1975, No. 415, § 9; 1975 (Extended Sess., 1976), No. 1195, § 3; 1979, No. 444, § 1; 1983, No. 201, § 10; A.S.A. 1947, §§ 9-738, 9-738.1; reen. Acts 1987, No. 1024, § 1; 1989 (1st Ex. Sess.), No. 183, § 12; 1991, No. 674, § 1.

A.C.R.C. Notes. This section was reen-

acted by Acts 1987, No. 1024, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

15-31-111. Fees.

(a) The Arkansas Forestry Commission is authorized to charge private landowners a rate not to exceed four dollars (\$4.00) per acre for the preparation of timber management plans.

(b) The proceeds from the charge shall be used to provide for the maintenance, operation, and improvement of the commission.

(c) The commission is authorized to promulgate such rules and regulations necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the commission in such manner as may be necessary to support the programs of the commission as directed by the Governor and General Assembly.

History. Acts 1993, No. 865, §§ 2, 3; 1993, No. 1112, §§ 2, 3.

A.C.R.C. Notes. References to "this

chapter" in §§ 15-31-101 — 15-31-110 may not apply to this section which was enacted subsequently.

15-31-112. Enforcement of Poison Spring State Forest Regulations.

(a)(1) It shall be the duty of the Arkansas Forestry Commission's law enforcement personnel to enforce the Poison Springs State Forest regulations promulgated by the commission pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) The commission's law enforcement personnel shall have the right to take the offenders before any court having jurisdiction in the county where the offense is committed.

(b) Violations of Poison Springs State Forest regulations shall be considered unclassified misdemeanors, the penalty for which shall be in accordance with the regulation defining the conduct, but in no case shall the penalty for violating any Poison Springs State Forest regulation exceed the penalty established by law for a Class A misdemeanor.

History. Acts 1997, No. 123, § 1.

may not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to "this chapter" in §§ 15-31-101 — 15-31-110

15-31-113. Legislative findings — Purpose.

(a) The General Assembly finds:

(1) The Arkansas Forestry Commission enforces laws pertaining to wildland fires, timber theft, and unlawful dumping on forest land;

(2) Under current law, fines resulting from violations of the wildland fire laws are deposited with local school districts; and

(3) The law is silent on where to deposit fines resulting from violations of the dumping and timber theft laws.

(b) The purpose of this section and §§ 15-31-114 and 5-38-201 [repealed] is to establish that fines generated by law enforcement activities of the commission be deposited into the State Forestry Fund.

History. Acts 1997, No. 132, § 1; 2005, No. 1962, § 71.

enacted subsequently.

A.C.R.C. Notes. References to "this chapter" in §§ 15-31-101 — 15-31-110 may not apply to this section which was

Amendments. The 2005 amendment inserted the present subdivision designations; and inserted "The General Assembly finds" in (a).

15-31-114. Classification of fines.

Fines deposited into the State Forestry Fund shall be classified as special revenues.

History. Acts 1997, No. 132, § 3.

may not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to "this chapter" in §§ 15-31-101 — 15-31-110

15-31-115. Classification of revenues.

Income derived from management of state forests by the Arkansas Forestry Commission and income derived from management of state nurseries by the commission shall be classified as special revenues under the Revenue Classification Law, § 19-6-101 et seq.

History. Acts 1997, No. 253, § 3.

enacted subsequently.

A.C.R.C. Notes. References to "this chapter" in §§ 15-31-101 — 15-31-110 may not apply to this section which was

Cross References. As to the State Forestry Trust Fund, see § 19-5-927.

15-31-116. Donation of fire control or fire rescue equipment.

(a)(1) A person may donate fire control or fire rescue equipment to the Arkansas Forestry Commission for the commission's use or for distribution to volunteer fire departments by the commission.

(2) Breathing apparatus that is donated to the commission shall be recertified to the manufacturer's specifications by a technician certified by the manufacturer before it is used by the commission or made available to a volunteer fire department.

(b)(1) A person is not liable in civil damages for personal injury, property damage, or death resulting from a defect in equipment donated in good faith by a person under this section unless the person's act or omission proximately causing the claim, damage, or loss constitutes malice, gross negligence, recklessness, or intentional misconduct.

(2) The commission, its director, and other officers and employees are not liable in civil damages for personal injury, property damage, or death resulting from a defect in equipment sold, loaned, or otherwise made available in good faith by the Director of the Arkansas Forestry Commission under this section unless the act or omission of the commission or its director, officer, or employee proximately causing the claim, damage, or loss constitutes malice, gross negligence, recklessness, or intentional misconduct.

(c) In this section, "fire control or fire rescue equipment" means and includes vehicles, firefighting tools, protective gear, breathing apparatus, and other supplies and tools used in firefighting or fire rescue.

History. Acts 1999, No. 106, § 1.

Acts 1999, No. 106, § 2, provided: "This section applies only to a cause of action that accrues on or after July 30, 1999."

A.C.R.C. Notes. References to "this chapter" in §§ 15-31-101 — 15-31-110 may not apply to this section which was enacted subsequently.

SUBCHAPTER 2 — ASSISTANCE TO PRIVATE OWNERS

SECTION.

15-31-201. Administration.

15-31-202. Authority to designate and estimate trees — Forestry advice.

15-31-203. Payment for services — Free services.

SECTION.

15-31-204. Employee interest in the purchase of estimated timber.

15-31-205. Disposition of revenues.

15-31-201. Administration.

The administration of the provisions of this subchapter shall be under the direction of the State Forester.

History. Acts 1947, No. 163, § 2; A.S.A. 1947, § 9-718.

15-31-202. Authority to designate and estimate trees — Forestry advice.

(a) The Arkansas Forestry Commission is authorized to designate, upon request, forest trees of private forest landowners for sale or removal, by blazing or otherwise, and to measure or estimate the volume of the trees under the terms and conditions as provided in this subchapter.

(b) Upon receipt of a request from a forest landowner for technical forestry assistance or service, the State Forester or his or her authorized agent may:

(1) Designate forest trees for removal for lumber, veneer, poles, piling, pulpwood, cordwood, ties, or other forest products by blazing, spotting with paint, or otherwise designating them in an approved manner;

(2) Measure or estimate the commercial volume contained in the trees designated;

(3) Furnish the forest landowner with a statement of the volume of the trees so designated and estimated; and

(4) Offer general forestry advice concerning the management of the landowner's forest.

History. Acts 1947, No. 163, §§ 1, 2;
A.S.A. 1947, §§ 9-717, 9-718.

15-31-203. Payment for services — Free services.

(a) For designating, measuring, or estimating services, the landowner or his or her agent, upon presentation of a statement, shall pay to the State Forester, within thirty (30) days of receipt of the statement, an amount not to exceed five percent (5%) of the sale price or fair market value of the stumpage so designated and measured or estimated.

(b) However, for the purpose of further encouraging the use of approved scientific forestry principles on the private forest lands of this state and to permit explanation of the application of principles, the State Forester, where he or she deems it advisable, may designate and measure or estimate without charge the trees of a forest landowner on an area not in excess of eighty (80) acres.

History. Acts 1947, No. 163, § 2; A.S.A.
1947, § 9-718.

15-31-204. Employee interest in the purchase of estimated timber.

(a) No employee of the Arkansas Forestry Commission, directly or indirectly, shall be interested in the purchase of the timber so estimated.

(b) If any such employee violates this section or if anyone aids or abets any employee in the violation of this section, upon conviction, he or she shall be fined in a sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) and by removal from office.

History. Acts 1947, No. 163, § 4; A.S.A.
1947, § 9-720.

15-31-205. Disposition of revenues.

All moneys collected under the provisions of this subchapter shall be deposited with the State Forester and shall be used by him or her in carrying out the provisions of this subchapter.

History. Acts 1947, No. 163, § 3; A.S.A. 1947, § 9-719.

CHAPTER 32

LOGGING

SUBCHAPTER

1. GENERAL PROVISIONS.
2. COUNTY TIMBER INSPECTOR.
3. TRESPASS AND UNLAWFUL CUTTING.
4. MEASUREMENT AND MARKING OF LOGS.
5. TIMBER SALES.
6. TIMBER TRUST MONEY.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

15-32-101. Boundaries to be ascertained
before timber is cut.

Effective Dates. Acts 1885, No. 45,
§ 4: effective on passage.

15-32-101. Boundaries to be ascertained before timber is cut.

(a) Any person who desires to cut and remove any timber from any land in this state, unless the land has been surveyed and the boundaries thereof ascertained and known, before cutting and removing the timber, the person shall:

(1) Cause the land to be surveyed and the metes and bounds of the land marked and plainly established;

(2) Rely in good faith on an existing marked line or established corners; or

(3) Acquire a document signed by the landowner selling the timber and signed by the adjoining landowners, indicating that the landowners agree on the location of the boundary.

(b) This section shall apply to any person purchasing timber rights from lands of this state as well as to landowners.

(c) The provisions of this section are not intended to repeal or in any manner interfere with the provisions of Acts 1883, No. 83.

(d) Any person who shall be found guilty of a violation of the provisions of this section shall be deemed to have committed a misdemeanor and shall be fined, for each offense, in any sum not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300) and may be imprisoned in the county jail not more than six (6) months.

(e) This section shall not apply to the cutting and removing of timber by a public utility or its contractors for the purpose of constructing or maintaining a right-of-way.

History. Acts 1885, No. 45, §§ 1-3, p. 50; C. & M. Dig., §§ 7018, 7019; Pope's Dig., §§ 8998, 8999; A.S.A. 1947, §§ 54-201, 54-202, 54-202n; Acts 2001, No. 544, § 1.

Publisher's Notes. Acts 1883, No. 83, referred to in this section, is codified as §§ 15-32-201 — 15-32-206, 15-32-208, 15-32-301 — 15-32-311, and 15-32-401 — 15-32-410.

RESEARCH REFERENCES

Ark. L. Rev. Agency — Independent Contractor — Liability of Employer for Trespass to Land, 9 Ark. L. Rev. 163.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Natural Resources, 24 U. Ark. Little Rock L. Rev. 513.

Annual Survey of Case Law: Criminal Law, 29 U. Ark. Little Rock L. Rev. 849.

CASE NOTES

ANALYSIS

Action for Damages.
Unofficial Survey.
Waiver.

Action for Damages.

While failure to procure survey may be considered as bearing upon willfulness or innocence of defendant in action for double damages under § 15-32-301, that failure is not conclusive evidence that defendant cut the timber "knowing" it to be on the land of another. *Parker v. Fenter*, 216 Ark. 398, 225 S.W.2d 940 (1950).

Instruction that failure to make survey "would be prima facie willful and unlawful and the plaintiff would be entitled to recover three times the value" of the timber under § 18-60-102 was properly refused. *Case v. Hunt*, 217 Ark. 929, 234 S.W.2d 197 (1950).

There was no merit to the argument that a verdict should have been instructed in appellant's favor for treble damages under § 18-60-102 because of this section, since this section does not deal with the willful cutting of timber or the amount of damages although failure to make survey could have been considered by jury as to willfulness of defendant's act. *Freeze v. Hinkle*, 229 Ark. 714, 317 S.W.2d 817 (1958).

Trial court did not err in denying appellants a new trial or remittitur regarding a punitive damage award in favor of appel-

lees, as the award was not in excess of federal due process standards, given that (1) appellees suffered economic harm, but the harm was much more than purely economic injury, as appellants cut down approximately 40 percent of appellees' future retirement homesite and the privacy afforded by the trees was very important to appellees, (2) appellants' action forced appellees to give up their plans to retire to the property and ultimately sell it, (3) the tree cutting was intentional and not an isolated incident, (4) the profit appellants received from the sale of their property was a direct result of the tree clearing on appellees' property, (5) the award was not so grossly excessive as to have violated federal due process, (6) each of appellants were on notice of and could have been charged with a Class C felony of criminal mischief under § 5-38-203(b)(1) with, under § 5-4-201(a)(2), a potential fine of \$10,000, plus a violation of subdivision (a)(1) of this section, (7) was a misdemeanor, with a potential fine and jail time, and (8) under § 18-60-102(a)(1), appellants had ample notice that their actions could result in a penalty of \$25,000 punitive damages. *Bronakowski v. Lindhurst*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 568 (June 24, 2009), rehearing denied, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 669 (July 29, 2009).

Unofficial Survey.

A conviction was not sustained where the landowner had procured an unofficial

survey which was less favorable to its rights than a subsequent official survey, and the defendant company had cut no timber except on its own land. *Sawyer & Austin Lumber Co. v. State*, 75 Ark. 309, 87 S.W. 431 (1905).

Waiver.

This section is clearly for the protection of owners of property adjacent to timber

about to be cut, and can be waived by parties as to their timber, even if applicable to such a situation. *Rice v. Moudy*, 217 Ark. 816, 233 S.W.2d 378 (1950).

Cited: *Freeze v. Hinkle*, 229 Ark. 714, 317 S.W.2d 817 (1958); *Jester v. State*, 367 Ark. 249, 239 S.W.3d 484 (2006).

SUBCHAPTER 2 — COUNTY TIMBER INSPECTOR

SECTION.

- 15-32-201. County surveyor to act as timber inspector.
- 15-32-202. Oath.
- 15-32-203. Bond — Contents.
- 15-32-204. Oath and bond filed in recorder's office — Suit on bond.
- 15-32-205. Inspector prohibited from purchasing public lands — Penalty.

SECTION.

- 15-32-206. Deputies — Authority to administer oaths.
- 15-32-207. Quarterly reports and payment of funds.
- 15-32-208. Rules and regulations governing duties of deputies.

Effective Dates. Acts 1901, No. 130, § 25: effective on passage.

RESEARCH REFERENCES

Am. Jur. 52 Am. Jur. 2d, Logs, § 6.

C.J.S. 54 C.J.S., Logs, § 42.

15-32-201. County surveyor to act as timber inspector.

The county surveyors of each county of the State of Arkansas shall be ex officio timber inspectors for their respective counties and shall discharge the duties and receive the fees herein provided.

History. Acts 1883, No. 83, § 9, p. 140; § 6985; Pope's Dig., § 8965; A.S.A. 1947, 1901, No. 130, § 1, p. 202; C. & M. Dig., § 54-101.

15-32-202. Oath.

The county surveyors, as ex officio timber inspectors of their respective counties as provided in the preceding section, before entering upon the duties of office, shall take and subscribe the following oath:

"I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Arkansas; that I will not engage, directly or indirectly, in the purchase for my own benefit, or for the benefit of any other person, of any of the public lands so long as I remain county timber inspector for the county; and that I will

faithfully, and to the best of my ability, discharge the duties of the county timber inspector, so help me God."

History. Acts 1883, No. 83, § 10, p. 140; 1901, No. 130, § 2, p. 202; C. & M. Dig., § 6986; Pope's Dig., § 8966; A.S.A. 1947, § 54-102.

15-32-203. Bond — Contents.

He or she shall also execute a bond to the State of Arkansas in the sum of five thousand dollars (\$5,000) with two (2) or more securities to be approved as provided in Acts 1875, No. 82, § 1 [superseded], conditioned that he or she will faithfully perform his or her duties as county timber inspector and deliver to his or her successor in office all bills, papers, journals, books, and other effects appertaining to his or her office.

History. Acts 1883, No. 83, § 10, p. 140; 1901, No. 130, § 3, p. 202; C. & M. Dig., § 6987; Pope's Dig., § 8967; A.S.A. 1947, § 54-103.

A.C.R.C. Notes. The operation of this section was suspended by adoption of a

self-insured fidelity bond program for state officers, officials, and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The section may again become effective upon cessation of coverage under that program. See § 21-2-703.

15-32-204. Oath and bond filed in recorder's office — Suit on bond.

The oath of office and bond as county timber inspector shall be filed in the recorder's office of the county. Any person feeling himself or herself aggrieved may commence an action in his or her own name on the bond in like manner as actions may be brought on other official bonds.

History. Acts 1883, No. 83, § 10, p. 140; 1901, No. 130, § 4, p. 202; C. & M. Dig., § 6988; Pope's Dig., § 8968; A.S.A. 1947, § 54-104.

Publisher's Notes. As to bond, see A.C.R.C. Notes to § 15-32-203.

15-32-205. Inspector prohibited from purchasing public lands — Penalty.

(a) The county timber inspector is prohibited from purchasing any of the public lands, directly or indirectly, either in his or her own name or in the name of any other person in trust for him or her.

(b) For every tract or parcel of land purchased in violation of this section, the county timber inspector shall forfeit two hundred dollars (\$200).

History. Acts 1883, No. 83, § 10, p. 140; 1901, No. 130, § 5, p. 202; C. & M.

Dig., § 6989; Pope's Dig., § 8969; A.S.A. 1947, § 54-105.

15-32-206. Deputies — Authority to administer oaths.

(a) The county timber inspectors may appoint one (1) or more deputies for their respective counties for whose conduct and fidelity in the discharge of their duties as such the county timber inspector making the appointment shall be responsible upon his or her official bond.

(b) The county timber inspectors and their deputies shall have power and authority to administer oaths for any purpose relating to their office.

History. Acts 1883, No. 83, § 11, p. 140; § 6990; Pope's Dig., § 8970; A.S.A. 1947, 1901, No. 130, § 6, p. 202; C. & M. Dig., § 54-106.

15-32-207. Quarterly reports and payment of funds.

(a)(1) The county timber inspectors shall make quarterly reports to the Auditor of State of their action as such of:

(A) All moneys collected by them;

(B) All suits pending; and

(C) Other matters that may be of interest to the state.

(2) The Auditor of State shall charge county timber inspectors with all amounts due the state by the county timber inspectors as shown by their reports, in a book kept for that purpose.

(b) Each county timber inspector shall quarterly on the first Monday of January, April, July, and October of each year pay to the Treasurer of State all moneys he or she may have in his or her hands belonging to the state, taking his or her duplicate receipt for the money, one (1) of which he or she will file with the Auditor of State, who will credit his or her respective account with the money.

History. Acts 1901, No. 130, § 23, p. § 8996; A.S.A. 1947, § 54-215; Acts 1995, 202; C. & M. Dig., § 7016; Pope's Dig., No. 1296, § 54.

15-32-208. Rules and regulations governing duties of deputies.

The county timber inspectors shall prescribe by written rules and regulations the duties of their deputies not inconsistent with this subchapter.

History. Acts 1883, No. 83, § 21, p. Dig., § 7001; Pope's Dig., § 8981; A.S.A. 140; 1901, No. 130, § 10, p. 202; C. & M. 1947, § 54-304.

SUBCHAPTER 3 — TRESPASS AND UNLAWFUL CUTTING

SECTION.

15-32-301. Liability for unlawfully cutting, etc.

15-32-302. Attachment procedure.

15-32-303. Seizure of logs unlawfully cut from state lands — Filing of notice and complaint.

SECTION.

15-32-304. Verification of complaint — Issuance and service of summons.

15-32-305. Return of officer when no one in possession — Warning order — Appeals.

SECTION.

- 15-32-306. Disposition of logs under judgment.
 15-32-307. Prosecuting attorney.
 15-32-308. Distribution of proceeds.
 15-32-309. Trespass or waste — Communicating information and filing complaint.

SECTION.

- 15-32-310. Certificate of Secretary of State — Presumptive evidence.
 15-32-311. Payment of funds into State Treasury.

Cross References. Removing timber from state lands, penalty, damages, §§ 5-72-103, 15-32-101, 22-5-602.

Treble damages for cutting down or in-

juring trees on land of another, § 18-60-102.

Effective Dates. Acts 1901, No. 130, § 25: effective on passage.

RESEARCH REFERENCES

Am. Jur. 52 Am. Jur. 2d, Logs, § 105 et seq.

Ark. L. Rev. Agency — Independent Contractor — Liability of Employer for Trespass to Land, 9 Ark. L. Rev. 163.

Gitelman, The Impact of the Statute of Gloucester on the Development of the American Law of Waste, 39 Ark. L. Rev. 669.

C.J.S. 54 C.J.S., Logs, §§ 88, 89.

15-32-301. Liability for unlawfully cutting, etc.

(a) Any person who shall knowingly cut down, destroy, or carry away any tree, timber, lumber, staves, or shingles made therefrom, contrary to this subchapter, any person who shall aid and abet or assist any other person in so doing, and any person who shall purchase or receive any trees, timber, lumber, staves, or shingles knowing them to have been cut contrary to the provisions of this subchapter shall be jointly and severally liable to the owner in double the value thereof, to be recovered by action at law in the name of the state in case those items should be cut from the lands of the state or in the name of the corporation or person owning the land in case those items shall be so cut from other lands.

(b) A violation of any of the provisions of this subchapter shall be grounds for an attachment against the property of the persons who shall be guilty of the violation, to be issued in the same manner as attachments in other civil actions.

History. Acts 1883, No. 83, § 6, p. 140; C. & M. Dig., § 7004; Pope's Dig., § 8984; A.S.A. 1947, § 54-203.

RESEARCH REFERENCES

Ark. L. Notes. Brill, Arkansas Law of Damages, Fifth Edition, Chapter 30: Real Property, 2004 Arkansas L. Notes 9.

CASE NOTES

ANALYSIS

Equity.
Evidence.
Knowledge.
Remedy Not Exclusive.

Equity.

Neither double nor treble damages are recoverable in equity unless the action was originally brought at law. *Augusta Cooperage Co. v. Bloch*, 153 Ark. 133, 239 S.W. 760 (1922).

Evidence.

It was proper for court to instruct jury that purchase at tax sale could be considered only in determining whether defendant believed he had right to cut timber. *Stair v. Jones*, 223 Ark. 882, 269 S.W.2d 297 (1954).

In a trespass to timber action, a circuit court did not err in allowing the landowner's expert to testify as to the fair market value of all of the timber removed from the property, including that which was removed prior to the date the land was transferred to a trust, even though the landowner could not recover for timber removed prior to that date, because the evidence was relevant to prove defendants' wrongful conduct under Ark. R. Evid. 401 for purposes of an award of treble damages under § 18-60-102, of double damages under this section, and of punitive damages. *Travis Lumber Co. v. Deichman*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 377 (May 21, 2009).

Knowledge.

One who cuts down trees from another's land, having no cause to believe and not believing that he had a right to cut them, incurs the penalty of this section. *Rosengrant v. Matthews*, 55 Ark. 440, 18 S.W. 541 (1892).

The requirement of knowledge as a prerequisite to liability for double damages is a real requirement, not to be fictitiously satisfied. *Parker v. Fenter*, 216 Ark. 398, 225 S.W.2d 940 (1950).

In a trespass and conversion of timber action, the trial court did not err in wording two interrogatories to the jury regarding a timber company's knowledge of a forged timber deed and whether the company removed the timber with probable cause to believe that it owned the timber, because these interrogatories followed the language of this section, which authorized double damages if the timber cutting was "knowing," and § 18-60-102, which provided for single damages only if the timber company had probable cause to believe that the timber was its own. *Travis Lumber Co. v. Deichman*, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 377 (May 21, 2009).

Remedy Not Exclusive.

Remedy provided by this section is not exclusive but is in addition to remedies available at common law. *Bailey v. Hammonds*, 193 Ark. 633, 101 S.W.2d 785 (1937).

Cited: *Stair v. Jones*, 223 Ark. 882, 269 S.W.2d 297 (1954); *Russell v. Pryor*, 264 Ark. 45, 568 S.W.2d 918 (1978); *DeBoer v. Entergy Ark.*, 82 Ark. App. 400, 109 S.W.3d 142 (2003).

15-32-302. Attachment procedure.

In case the tree or timber shall be so unlawfully cut from state lands, then no bond shall be required on the part of the state, but the attachment shall issue upon the filing of an affidavit of the county timber inspector, deputy, or other person authorized by the county timber inspector setting forth sufficient grounds therefor. In all other respects, the proceedings upon attachments under this subchapter shall be the same as proceedings upon attachment in any other civil action.

History. Acts 1883, No. 83, § 6, p. 140; § 7005; Pope's Dig., § 8985; A.S.A. 1947, 1901, No. 130, § 13, p. 202; C. & M. Dig., § 54-204.

15-32-303. Seizure of logs unlawfully cut from state lands — Filing of notice and complaint.

In case a county timber inspector finds anywhere in his or her county any logs, timber, lumber, staves, shingles, shingle bolts, stocks, headings, wood, bark, stone, mineral, or other material unlawfully cut, dug, removed, or taken from any state lands, he or she shall:

- (1) Seize the materials or cause them to be seized;
 - (2) Give written notice of the seizure to any person or persons who may be found in possession or control of the materials; and
 - (3)(A) Cause a complaint to be filed in some court of competent jurisdiction charging the logs, timber, lumber, staves, shingles, shingle bolts, stocks, headings, wood, bark, stone, mineral, or other material to have been unlawfully cut, dug, removed, or taken from state lands and charging the materials to be the property of the state.
- (B) If no persons shall be found in possession or control of the materials, then the complaint shall state that fact.

History. Acts 1883, No. 83, § 7, p. 140; § 7006; Pope's Dig., § 8986; A.S.A. 1947, 1901, No. 130, § 14, p. 202; C. & M. Dig., § 54-205.

15-32-304. Verification of complaint — Issuance and service of summons.

(a) The complaint required by § 15-32-303 shall be sworn to by the county timber inspector or any credible witness.

(b)(1) On the filing of the complaint, the clerk of the court in case the complaint is filed in a court of record or the justice of the peace in case the complaint is filed with a justice of the peace shall issue a summons against the persons so named in the complaint as defendants commanding them to appear as in other actions at law before the court or justice and show cause why the property mentioned in the complaint shall not be adjudged to be the property of the State of Arkansas.

(2) The summons shall be served in the same manner as a summons in any other cause, and the trial of the cause shall proceed in all respects as the trial of other civil actions.

History. Acts 1883, No. 83, § 7, p. 140; § 7007; Pope's Dig., § 8987; A.S.A. 1947, 1901, No. 130, § 15, p. 202; C. & M. Dig., § 54-206.

15-32-305. Return of officer when no one in possession — Warning order — Appeals.

(a) If no person is found in possession of logs, timber, lumber, staves, shingles, shingle bolts, stocks, headings, wood, bark, stone, mineral, or other material and if no person claims the materials, or if the officer whose duty it is to serve the summons fails to find the parties therein named, then, upon the return of the officer or upon the oath of the county timber inspector or other person acting under his or her authority, the clerk of the court or the justice of the peace shall make

out a warning order and publish the warning order as is now provided by law in proceedings by attachment.

(b) Appeals may be prosecuted in any such cause the same as in other civil actions.

(c) In case the State of Arkansas appeals, no bond shall be required.

History. Acts 1883, No. 83, § 7, p. 140; § 7008; Pope's Dig., § 8988; A.S.A. 1947, 1901, No. 130, § 16, p. 202; C. & M. Dig., § 54-207.

15-32-306. Disposition of logs under judgment.

If judgment is rendered for the state in any action, the county timber inspector shall sell the logs, timber, lumber, staves, shingles, shingle bolts, stocks, headings, wood, bark, stone, mineral, or other material at public sale but may sell the materials at private sale upon order of the court rendering judgment or upon order of the judge thereof, either in term time or vacation.

History. Acts 1883, No. 83, § 7, p. 140; § 7009; Pope's Dig., § 8989; A.S.A. 1947, 1901, No. 130, § 17, p. 202; C. & M. Dig., § 54-208.

15-32-307. Prosecuting attorney.

(a) It shall be the duty of the prosecuting attorney of the circuit in which any suit on behalf of the state instituted by the county timber inspector or by his or her authority under the provisions of this subchapter may be pending to prosecute the suit on the part of the state.

(b)(1) Immediately upon receiving information of any trespass upon lands in his or her circuit, every prosecuting attorney shall prosecute the proper criminal action against the offender and advise the county timber inspector thereof of the county in which the trespass occurred.

(2) When required by the county timber inspector, the prosecuting attorney shall prosecute a civil action for damages for any trespass or to recover possession of any material taken from any land.

History. Acts 1883, No. 83, §§ 8, 22, p. §§ 8990, 8993; A.S.A. 1947, §§ 54-209, 140; 1901, No. 130, §§ 18, 21, p. 202; C. & M. Dig., §§ 54-212.

15-32-308. Distribution of proceeds.

The proceeds of all sales from seizure and fines under this subchapter shall be paid as follows:

(1) When a county timber inspector or his or her deputy makes the seizure upon his or her own information:

(A) Forty percent (40%) of the proceeds shall be paid to the county timber inspector;

(B) Ten percent (10%) of the proceeds shall be paid to the prosecuting attorney; and

(C) The remaining fifty percent (50%) of the proceeds shall be paid into the State Treasury; and

(2) When the seizure is made on the information of someone else:

(A) Twenty-five percent (25%) of the proceeds shall be paid to the county timber inspector;

(B) Fifteen percent (15%) of the proceeds shall be paid to the informant;

(C) Ten percent (10%) of the proceeds shall be paid to the prosecuting attorney; and

(D) The remaining fifty percent (50%) of the proceeds shall be paid into the State Treasury.

History. Acts 1883, No. 83, § 18, p. Dig., § 7011; Pope's Dig., § 8991; A.S.A. 140; 1901, No. 130, § 19, p. 202; C. & M. 1947, § 54-210.

15-32-309. Trespass or waste — Communicating information and filing complaint.

All sheriffs and township officers are especially charged to immediately communicate to the prosecuting attorney and county timber inspector any and all information received by them respecting the commission of any trespass or waste on any public lands and to enter complaint against the offender before some justice of the peace.

History. Acts 1883, No. 83, § 22, p. Dig., § 7012; Pope's Dig., § 8992; A.S.A. 140; 1901, No. 130, § 20, p. 202; C. & M. 1947, § 54-211.

15-32-310. Certificate of Secretary of State — Presumptive evidence.

In any criminal or civil action growing out of a trespass upon any public lands, the certificate of the Secretary of State under the Great Seal of the State of Arkansas that any specified piece or tract of land belongs to the state or is mortgaged to the state or that the state has any interest legal or equitable in the piece or tract of land shall be presumptive evidence of the facts stated therein.

History. Acts 1883, No. 83, § 23, p. 140; C. & M. Dig., § 7014; Pope's Dig., § 8994; A.S.A. 1947, § 54-213.

15-32-311. Payment of funds into State Treasury.

All money received from the sale of logs, timber, lumber, shingles, minerals, or other articles seized under the provisions of this chapter or recovered in legal proceedings for damages done the public lands, after paying the county timber inspectors, prosecuting attorneys, and witnesses as provided in § 15-32-308, shall be paid into the State Treasury to the credit of the respective funds to which the lands belong on which such trespasses were committed. All other money collected as expenses,

fees, penalties, and damages for trespass on such lands shall be paid into the general fund.

History. Acts 1883, No. 83, § 24, p. 140; 1901, No. 130, § 22, p. 202; C. & M. Dig., § 7015; Pope's Dig., § 8995; A.S.A. 1947, § 54-214.

SUBCHAPTER 4 — MEASUREMENT AND MARKING OF LOGS

SECTION.

- 15-32-401. Certified bill of measurement.
- 15-32-402. Method of scaling or measuring.
- 15-32-403. Monthly accounts of deputies.
- 15-32-404. Reports of inspectors to General Assembly.
- 15-32-405. Recording of marks.
- 15-32-406. Penalty for unlawfully marking logs.
- 15-32-407. Recording of mortgages and sales of marked logs.

SECTION.

- 15-32-408. Prize logs — Lien for driving when intermingled with marked logs.
- 15-32-409. Failure to mark rafted logs.
- 15-32-410. Fees.
- 15-32-411. Wages for piecework.
- 15-32-412. Purchases on basis of volume or weight.
- 15-32-413. Actions to recover difference in wages or purchase price — Attorney's fees.

Cross References. Aid in designating trees for sale or measuring by state division of forestry, § 15-31-201 et seq.

Effective Dates. Acts 1901, No. 130, § 25: effective on passage.

Acts 1939, No. 57, § 8: Feb. 9, 1939. Emergency clause provided: "Whereas, many employees engaged in the state of Arkansas in the severance of timber are being discriminated against and are not being paid a fair wage commensurate with

the duty and labor performed; and, whereas, it is necessary for the health, protection and the well being of the employees in the state of Arkansas, engaged in severance of timber, that the above inequality be alleviated; now therefore, an emergency is declared to exist and this act shall take effect and be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 52 Am. Jur. 2d, Logs, § 6.

C.J.S. 54 C.J.S., Logs, § 40 et seq.

15-32-401. Certified bill of measurement.

(a)(1) A county timber inspector, in person or by deputy, at the request of any owner of logs, timber, or lumber, after a scalement or measurement thereof, shall make a bill, stating therein:

(A) The number of logs;

(B) The number of feet, by board measure, contained in the logs and lumber;

(C) The number of feet, cubic, running, or board measure, contained in the timber; and

(D) At whose request the logs, timber, or lumber was scaled or measured and to whom scaled or measured.

(2) The county timber inspector or his or her deputy shall enter a copy of the bill required by subdivision (a)(1) of this section upon the books of his or her office, to be provided by him or her and kept for that purpose, with the marks as they occurred upon the logs.

(b) A correct bill of the logs, timber, or lumber shall be given to the owner, with a certificate attached that it is a true and correct bill. This bill, so certified, shall be presumptive evidence of the facts therein contained and of the correctness of the scalement or measurement in all courts, except in favor of the inspector or deputy inspector who made the correct bill.

History. Acts 1883, No. 83, § 12, p. Dig., § 6991; Pope's Dig., § 8971; A.S.A. 140; 1901, No. 130, § 7, p. 202; C. & M. 1947, § 54-301.

15-32-402. Method of scaling or measuring.

(a) In surveying or measuring logs, the county timber inspectors and their deputies shall make such allowance for hollow, rotten, or crooked logs as would make them equal to good, sound, straight, and merchantable logs.

(b) All logs that are straight and sound are to be measured at their full size inside the bark at the small end.

(c) All logs over twenty-four feet (24') long not exceeding thirty-six feet (36') shall be scaled or measured as two (2) logs, allowing the rise from the first to the second log as may be required or as may seem proper in the opinion of the county timber inspectors or their deputies.

History. Acts 1883, No. 83, § 13, p. Dig., § 6992; Pope's Dig., § 8972; A.S.A. 140; 1901, No. 130, § 8, p. 202; C. & M. 1947, § 54-302.

15-32-403. Monthly accounts of deputies.

The county timber inspector shall require of each of his or her deputies, at the end of each month, a correct account of all of the logs, timber, or lumber measured by him or her during the month next preceding, and he or she shall immediately enter the account upon the books of his or her office.

History. Acts 1883, No. 83, § 13, p. Dig., § 6993; Pope's Dig., § 8973; A.S.A. 140; 1901, No. 130, § 9, p. 202; C. & M. 1947, § 54-303.

15-32-404. Reports of inspectors to General Assembly.

The county timber inspectors shall report to the General Assembly every two (2) years, within ten (10) days after the meeting thereof, the amount of logs, timber, and lumber scaled or measured by them for the two (2) years previous to the date of their report.

History. Acts 1883, No. 83, § 19, p. Dig., § 7002; Pope's Dig., § 8982; A.S.A. 140; 1901, No. 130, § 11, p. 202; C. & M. 1947, § 54-305.

15-32-405. Recording of marks.

Any owner of logs or timber in this state may use thereon any mark not before recorded and used by any other person, but he or she shall leave the mark with the county timber inspector or his or her deputy. The mark shall be recorded in the office of county timber inspector, and county timber inspector's books shall be at all times open for the inspection of all persons.

History. Acts 1883, No. 83, § 15, p. 140; C. & M. Dig., § 6995; Pope's Dig., § 8975; A.S.A. 1947, § 54-306.

15-32-406. Penalty for unlawfully marking logs.

(a) No person shall:

(1) Use any mark on any logs or timber until the mark has been recorded by him or her as required by § 15-32-405;

(2) Use any mark previously recorded and used by another; or

(3) Mark any prize log.

(b) For every violation of either provision, the offender shall forfeit ten dollars (\$10.00), one-half (½) for the use of the person prosecuting therefor and the other half (½) to the State of Arkansas.

History. Acts 1883, No. 83, § 15, p. 140; C. & M. Dig., § 6996; Pope's Dig., § 8976; A.S.A. 1947, § 54-307.

15-32-407. Recording of mortgages and sales of marked logs.

(a) All mortgages, liens, bills of sales, or other written instruments in any way affecting the ownership of any marked logs, which shall specify the marks placed upon the logs and when they were cut, shall be recorded in the office of the county timber inspector.

(b) No conveyance, lien, mortgage, or transfer shall be valid except as to the parties thereto, until it is recorded or until it shall be filed with some deputy county timber inspector, who shall immediately forward the instrument to the inspector.

(c) The filing and recording of all instruments and papers shall have the same effect as notice as the recording of deeds and mortgages in the office of the recorder of deeds.

History. Acts 1883, No. 83, § 16, p. 140; C. & M. Dig., § 6997; Pope's Dig., No. 1296, § 55. § 8977; A.S.A. 1947, § 54-308; Acts 1995,

15-32-408. Prize logs — Lien for driving when intermingled with marked logs.

(a)(1) All prize logs shall be divided between the owners in each district in proportion to the number of logs owned by each person or company, respectively, in the district.

(2) "Prize logs" means logs bearing no marks and all logs bearing marks not recorded or claimed within one (1) year after any general drive.

(b)(1) Any person with whose logs or timber in any waters of this state the prize logs or timber shall become so intermixed that they cannot be conveniently separated for the purpose of being floated to the market or place of manufacture, may drive all logs or timber with which his or her own may be intermixed toward the market or place when no special or different provision is made by law for driving the logs or timber. He or she shall be entitled to reasonable compensation from the owner for driving the logs or timber, to be recovered after demand therefor on the owner or agent, if known.

(2) He or she shall have a prior lien thereon until thirty (30) days after they arrive at their place of destination to enable him or her to attach the logs or timber.

(3) If the owner thereof cannot be ascertained, the property shall be liable according to law and enough shall be disposed of to defray the expenses thereof.

History. Acts 1883, No. 83, § 17, p. 140; C. & M. Dig., §§ 6998, 6999; Pope's Dig., §§ 8978, 8979; A.S.A. 1947, § 54-309.

RESEARCH REFERENCES

Ark. L. Rev. Creditors' Provisional Rights: Statutory Liens in Arkansas, 32 Remedies and Debtors' Due Process Ark. L. Rev. 185.

15-32-409. Failure to mark rafted logs.

(a) Every person rafting logs on any of the rivers of this state shall have the marks thereon on the upper side of every log when rafted, open to view and inspection to all persons interested.

(b) Every person violating this section shall forfeit one dollar (\$1.00) for each log, the mark of which shall not be so exposed:

- (1) One-half ($\frac{1}{2}$) to the use of the person prosecuting therefor;
- (2) One-fourth ($\frac{1}{4}$) to the state; and
- (3) The other one-fourth ($\frac{1}{4}$) to the prosecuting attorney.

History. Acts 1883, No. 83, § 20, p. 140; C. & M. Dig., § 7000; Pope's Dig., § 8980; A.S.A. 1947, § 54-310.

15-32-410. Fees.

County timber inspectors shall be entitled to receive the following fees for services:

- (1)(A)(i) Five cents (5¢) per thousand feet (1000') for scaling or measuring and making out survey bills for all logs they are called upon to scale or measure;
- (ii) Twelve cents (12¢) per thousand feet (1000') running measure for measuring square timber; and

(iii) Ten cents (10¢) per thousand feet (1000') for sawed lumber, including bills.

(B) In all such cases, fees shall be paid by the owner of the logs, timber, or lumber scaled or measured;

(2) Fifty cents (50¢) for recording each mark; and

(3) For recording any mortgage, bill of sale, or other written instrument, the same fees allowed by law to recorders of deeds for recording like instruments.

History. Acts 1883, No. 83, § 18, p. Dig., § 7003; Pope's Dig., § 8983; A.S.A. 140; 1901, No. 130, § 12, p. 202; C. & M. 1947, § 54-311; Acts 1995, No. 1296, § 55.

CASE NOTES

Larger Fees Unauthorized.

The county surveyor is, as timber inspector, entitled to fees prescribed, and an

agreement by the county court to pay more is unauthorized. *Prairie County v. Radican*, 174 Ark. 622, 296 S.W. 80 (1927).

15-32-411. Wages for piecework.

(a) All wages for piecework when applied to the severance of timber on a cordage basis when the piecework is paid for on the basis of measures of volume or weight shall be computed upon the basis of the measures of volume or weight as the measures of volume or weight are now or may hereafter be defined by the statutes of the State of Arkansas.

(b) Any employer who, in paying wages for piecework, makes payment of an amount less than the wages earned when computed as provided in subsection (a) of this section, shall be liable to his or her employee for two (2) times the difference between the amount paid and the amount of wages earned when computed as provided in subsection (a) of this section.

History. Acts 1939, No. 57, §§ 1, 2; A.S.A. 1947, §§ 54-312, 54-313.

Cross References. "Cord" defined, § 4-18-333.

RESEARCH REFERENCES

Ark. L. Rev. The Southern Pulpcripper and the "Short Stick": The Mississippi Uniform Pulpwood Scaling and Practices Act, 38 Ark. L. Rev. 359.

15-32-412. Purchases on basis of volume or weight.

(a) Any person who purchases products as provided in § 15-32-411(a) at a price based on the volume or weight of the products shall pay for the products upon the basis of measures as the measures are now or may hereafter be defined by the statutes of this state.

(b) Any person who, in making payment for products bought at a price based on volume, makes a payment of an amount less than the correct total when computed as provided in subsection (a) of this section, shall be liable to the seller for the difference between the

amount paid and the total when computed as provided in subsection (a) of this section, and, in addition, shall be liable to the seller for a further sum equal to the difference.

History. Acts 1939, No. 57, §§ 3, 4;
A.S.A. 1947, §§ 54-314, 54-315.

15-32-413. Actions to recover difference in wages or purchase price — Attorney's fees.

In all actions to enforce the payments provided in this subchapter, the plaintiff, if successful, shall be awarded reasonable attorney's fees in addition to the payments provided in this subchapter.

History. Acts 1939, No. 57, § 5; A.S.A.
1947, § 54-316.

SUBCHAPTER 5 — TIMBER SALES

SECTION.

15-32-501. Co-owners and coheirs.

15-32-501. Co-owners and coheirs.

(a) A co-owner or coheir of land may execute an act of timber sale whereby he or she sells his or her undivided interest in the timber, and any condition imposing a time period within which to remove the timber shall commence from the date of its execution.

(b)(1) A buyer may purchase the timber from unknown or unlocatable co-owners or coheirs of land and may remove the timber without the consent of the unknown or unlocatable co-owners or coheirs when:

(A) At least eighty percent (80%) of the ownership interest in the land has consented; and

(B) He or she has made a diligent search and inquiry for any unknown or unlocatable co-owners or coheirs, including publishing a notice in a newspaper of general circulation in the county in which the property is located in accordance with subdivision (b)(2) of this section, and after diligent search and inquiry, he or she is unable to ascertain and locate any other co-owners or coheirs; and

(C)(i) He or she has filed with the circuit clerk of the county in which the property is located a record of his or her diligent search and inquiry, together with a certificate of affirmation under the penalties of perjury that the facts stated therein are within his or her personal knowledge and are true, for which the clerk may charge the same fees as are allowed by law for similar services.

(ii) The circuit clerk shall maintain these records for a period of five (5) years.

(2)(A) The notice required by this section shall be published weekly for two (2) consecutive weeks in a newspaper having general circulation in the county in which the land is located, the last date of publication being not more than forty (40) nor less than twenty (20)

days from the date on which timber may be removed from the property pursuant to a proposed contract.

(B) The notice shall contain:

- (i) A description of the real property on which the timber is located;
- (ii) The names and addresses of the known owners;
- (iii) The names and addresses of the potential buyers;
- (iv) A statement that the potential buyers and the known owners of the property intend to enter into a contract for the removal of timber from the land described;

(v) The date on which timber, pursuant to the intended contract, may be removed from the land;

(vi) The name and address of the person to whom an unknown owner may make his or her interest known; and

(vii) A statement that any unknown owner must make his or her interest known before the date that timber may be removed from the land pursuant to the intended contract.

(3) A buyer who does not conduct a diligent search and inquiry shall be liable in treble damages to any alleged unknown or unlocatable owners or heirs.

(4) A buyer who knows and locates but does not contract with a co-owner or coheir shall be liable in treble damages to the alleged unknown and unlocatable co-owner or coheir.

(c)(1) A co-owner or coheir of the land who does not consent to the exercise of such rights has no liability for the cost of timber operations resulting from the sale of the timber and shall receive from the buyer the same price which the buyer paid to the other co-owners or coheirs.

(2) The consenting co-owners or coheirs shall agree to indemnify and hold harmless the nonconsenting co-owners or coheirs for any damage or injury claims which may result from such operations.

(d)(1) If the nonconsenting co-owner or coheir fails or refuses to claim his or her portion of the sale price of the timber, the buyer shall transmit to the clerk of the circuit court for deposit into the registry of the court that portion of the sales price, there to be held in escrow for and on behalf of the nonconsenting co-owner or coheir, and any interest or other income earned by the funds shall inure to the benefit of the co-owner or coheir.

(2) Any of the funds not claimed within seven (7) years after deposit into the registry of the court shall escheat to the county from which the timber was severed.

(e) Failure to comply with the provisions of this section shall constitute prima facie evidence of the intent to commit theft of the timber by the buyer.

SUBCHAPTER 6 — TIMBER TRUST MONEY

SECTION.

15-32-601. Definitions.

15-32-602. Timber Trust Funds — Trustees — Beneficiaries.

15-32-603. Offenses.

SECTION.

15-32-604. Defenses.

15-32-605. Secondary purchasers exempt from liability.

15-32-601. Definitions.

As used in this subchapter:

(1) "Owner" means any person, partnership, corporation, unincorporated association, or other legal entity having any interest in any:

(A) Timber;

(B) Land upon which timber grows; or

(C) Land from which timber has been removed;

(2) "Secondary purchaser" means any person, partnership, corporation, unincorporated association, or other legal entity buying timber from a timber purchaser; and

(3) "Timber purchaser" means a person who purchases standing timber for harvest.

History. Acts 2001, No. 1247, § 1.

15-32-602. Timber Trust Funds — Trustees — Beneficiaries.

(a) Money a timber purchaser collects for harvested timber is trust money.

(b) A timber purchaser and each officer, director, partner, or agent of a timber purchaser are trustees of trust money.

(c) Each seller of standing timber is a beneficiary of trust money to the extent of the beneficiary's share of the purchase price for the timber.

History. Acts 2001, No. 1247, § 2.

15-32-603. Offenses.

(a) A trustee commits the offense of timber theft if the trustee, knowingly or with intent to defraud, directly or indirectly retains, uses, disperses, or otherwise diverts trust money without first fully paying all of the beneficiaries the purchase price for the timber.

(b) A trustee acts with intent to defraud if the trustee retains, uses, disperses, or diverts trust money with the intent to deprive a beneficiary of trust money.

(c) A trustee is presumed to have acted with intent to defraud if the trustee does not pay all of the beneficiaries the purchase price for the timber not later than the forty-fifth calendar day after the date the trustee collects money for the timber.

(d) The offense of timber theft is a Class D felony if the amount of trust money retained, used, dispersed, or diverted before paying the

beneficiaries is five hundred dollars (\$500) or more and a Class A misdemeanor if under five hundred dollars (\$500).

History. Acts 2001, No. 1247, § 3.

15-32-604. Defenses.

It is an affirmative defense to prosecution under this subchapter that:

(1) The trustee paid the beneficiaries all trust money to which the beneficiaries were entitled not later than the fifteenth calendar day after the date written notice was given to the trustee, at the trustee's most recent address known, that a criminal complaint has been filed against the trustee or that a criminal investigation of the trustee is pending;

(2) Two (2) or more persons claim to be beneficiaries of the same trust money and the trustee has deposited the amount of the disputed trust money into the registry of the circuit court of the county in which the standing timber was located by action in interpleader or other appropriate legal proceeding for the benefit of persons the circuit court determines to be entitled to the trust money; or

(3) The trustee paid to the beneficiaries all trust money to which the beneficiaries were entitled not later than thirty (30) days after the date contractually agreed upon in writing.

History. Acts 2001, No. 1247, § 4.

15-32-605. Secondary purchasers exempt from liability.

Secondary purchasers shall not be civilly or criminally liable for any act or omission of a timber purchaser which becomes timber theft by operation of this subchapter.

History. Acts 2001, No. 1247, § 5.

CHAPTER 33

SOUTH CENTRAL INTERSTATE FOREST FIRE PROTECTION COMPACT

SECTION.

15-33-101. Text.

15-33-102. State Forester as compact administrator.

SECTION.

15-33-103. Effective date.

Effective Dates. Acts 1953, No. 361, § 5: Mar. 28, 1953. Emergency clause provided: "It is hereby determined by the General Assembly that forest fires take an enormous toll each year in human life and property damage, and that the danger of

forest fires is a constant threat to the lives and to the resources of the people of this State, and that by concerted effort with surrounding states, considerable savings in lives and property would result. Therefore, an emergency is declared to exist,

and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

15-33-101. Text.

The Governor on behalf of this State is hereby authorized to execute a compact, in substantially the following form, with any one or more of the States of Louisiana, Mississippi, Oklahoma, and Texas, and the General Assembly hereby signifies in advance its approval and ratification of the compact:

SOUTH CENTRAL INTERSTATE FOREST FIRE PROTECTION COMPACT

Article I

The purpose of this compact is to promote effective prevention and control of forest fires in the South Central region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member state, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other Regional Forest Fire Protection compacts or agreements, and for more adequate forest development.

Article II

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the States of Arkansas, Louisiana, Mississippi, Oklahoma and Texas which are contiguous have ratified it and Congress has given consent thereto. Any state not mentioned in this article which is contiguous with any member state may become a party to this compact, subject to approval by the legislature of each of the member states.

Article III

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement co-operation between such states in forest fire prevention and control.

The compact administrators of the member states shall organize to co-ordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products

industries representatives which shall meet from time to time with the compact administrators. Each member state shall name one member of the Senate and one member of the House of Representatives, and the Governor of each member state shall appoint one representative who shall be the chairman of the state forestry commission or comparable official and one representative who shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states, and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

Article IV

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

Article V

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith; provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or an imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided herein that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment

answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request. Provided, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purpose of this compact the term employee shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

Article VI

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member state.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future co-operative relationship or arrangement between the United States Forest Service and a member state or states.

Article VII

The compact administrators may request the United States Forest Service to act as the primary research and co-ordinating agency of the South Central Interstate Forest Fire Protection Compact in co-operation with the appropriate agencies in each state, and the United States Forest Service may accept the initial responsibility in preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of the United States Forest Service may attend meetings of the compact administrators.

Article VIII

The provisions of Articles IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be

operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region. Provided, that the legislature of such other state shall have given its assent to such mutual aid provisions of this compact.

Article IX

This compact shall continue in force and remain binding on each state ratifying it until the legislature or the Governor of such state takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

History. Acts 1953, No. 361, § 1; A.S.A. 1947, § 9-734.

15-33-102. State Forester as compact administrator.

The State Forester is designated as the compact administrator for this state and shall consult with like officials of the other member states and shall implement cooperation between member states in forest fire prevention and control.

History. Acts 1953, No. 361, § 3; A.S.A. 1947, § 9-736.

15-33-103. Effective date.

When the Governor has executed the compact on behalf of this state and has caused a verified copy thereof to be filed with the Secretary of State, and when the compact has been ratified by one (1) or more of the states named in § 15-33-101, then the compact shall become operative and effective as between this state and the other state or states. The Governor is authorized and directed to take action as necessary to complete the exchange of official documents between this state and any other state ratifying the compact.

History. Acts 1953, No. 361, § 2; A.S.A. 1947, § 9-735.

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Water pollution abatement facilities bonds, §15-20-1302.
Water resources development, §15-22-602.

Debt service fund.

Petroleum storage tank trust fund act, §15-5-1203.

Dedication.

Environmental quality, §15-20-312.

Designated investor group.

Venture capital investment, §15-5-1403.

DEFINED TERMS —Cont'd**Develop.**

General obligation economic development superprojects bond and funding act, §15-4-3003.

Pollution control, §15-22-702.

Water pollution abatement facilities bonds, §15-20-1302.

Water resources, §15-22-602.

Developer.

Development finance authority bonds, §15-5-403.

Development finance corporation.

Capital development companies, §15-4-1002.

Economic development, §15-4-903.

Diffused surface water.

Water resources, §15-22-202.

Digital basemap.

Geographic information systems board, §15-21-502.

Digital cadastre.

Geographic information systems board, §15-21-502.

Digital data repository.

Geographic information systems board, §15-21-502.

Direct fund.

Small business development, §15-5-703.

Distribution center.

Consolidated incentive act, §15-4-2703.

Economic development act, §15-4-1902.

Economic development incentive, §15-4-1602.

Enterprise zone, §15-4-1702.

Domestic use.

Ground water protection, §15-22-903.

Water resources, §15-22-202.

Drainage.

Water pollution abatement facilities bonds, §15-20-1302.

Educational facilities.

Development finance authority, §15-5-103.

Eligible activities.

Housing trust fund, §15-5-1703.

Eligible applicants.

Housing trust fund, §15-5-1703.

Eligible business.

Consolidated incentive act, §15-4-2703.

Economic development act, §15-4-1902.

Eligible company.

Tourism development, §15-11-503.

Eligible facility.

Major industry facilities incentive, §15-4-1802.

DEFINED TERMS —Cont'd**Endowment fund.**

Science and technology, §15-3-101.

Enterprise.

Science and technology, §15-3-101.

Enterprise development account.

Risk capital matching fund, §15-5-1603.

Equip.

Science and technology, §15-3-101.

Equity capital.

Capital development companies, §15-4-1002.

Risk capital matching fund, §15-5-1603.

Venture capital investment, §15-5-1403.

Equity interest.

Capital development companies, §15-4-1002.

Equity investment.

Consolidated incentive act, §15-4-2703.

Ethanol.

Arkansas alternative fuels development act, §15-13-102.

Excess surface water.

Water resources, §15-22-304.

Exempt.

Minority business economic development, §15-4-303.

Existing employees.

Amendment 82 bond financing, §15-4-3202.

Consolidated incentive act, §15-4-2703.

Economic development incentive, §15-4-1602.

Enterprise zone, §15-4-1702.

Facilities.

Consolidated incentive act, §15-4-2703.

Development finance authority, §15-5-103.

Science and technology, §15-3-101.

Fairness opinion.

Pooled loan securitization act, §15-20-801.

Federal agency.

Rural development program, §15-6-103.

Federal deposit insurance corporation.

Amendment 82 bond financing, §15-4-3202.

General obligation economic development superprojects bond and funding act, §15-4-3003.

Water pollution abatement facilities bonds, §15-20-1302.

DEFINED TERMS —Cont'd**Federal environmental acts.**

Construction assistance revolving loan fund, §15-5-909.

Feedstock processor.

Arkansas alternative fuels development act, §15-13-102.

Film and digital product.

Digital product and motion picture industry development, §15-4-2003.

Film office.

Digital product and motion picture industry development, §15-4-2003.

Final approval.

Tourism development, §15-11-503.

Financial advisor.

Pooled loan securitization act, §15-20-801.

Financial incentive agreement.

Consolidated incentive act, §15-4-2703.
Nonprofit incentive act of 2005, §15-4-3103.

Financial incentive plan.

Economic development act, §15-4-1902.
Economic development incentive, §15-4-1602.
Enterprise zones, §15-4-1702.

Financial institution.

Capital development companies, §15-4-1002.
County and regional industrial development companies, §15-4-1202.
Digital product and motion picture industry development, §15-4-2003.
Small business capital access, §15-5-1103.

Fire control or fire rescue equipment.

Forestry commission, §15-31-116.

Flood control.

Water pollution abatement facilities bonds, §15-20-1302.

Framework data.

Geographic information systems board, §15-21-502.

Fund.

Safe drinking water fund, §15-22-1101.

General local government.

Workforce investment act, §15-4-2203.

General revenues.

General obligation economic development superprojects bond and funding act, §15-4-3003.

GIS.

Geographic information systems board, §15-21-502.

DEFINED TERMS —Cont'd**Governing authority.**

Consolidated incentive act, §15-4-2703.
Economic development act, §15-4-1902.
Enterprise zone, §15-4-1702.
Nonprofit incentive act of 2005, §15-4-3103.
Public roads improvements tax credit, §15-4-2303.

Governing board.

Capital development companies, §15-4-1002.

Governing body.

Rural development program, §15-6-103.

Governing documents.

Capital development companies, §15-4-1002.

Gross general revenue.

Amendment 82 bond financing, §15-4-3202.

Gross sales revenues.

Inventors' assistance act, §15-4-1402.

Ground water.

Protection and management, §15-22-903.

Guaranty reserve account.

Development finance authority bonds, §15-5-403.

Health care facilities.

Development finance authority, §15-5-103.

Health care project costs.

Development finance authority, §15-5-103.

Highly compensated individual.

Digital product and motion picture industry development, §15-4-2003.

High unemployment.

Economic development act, §15-4-1902.
Economic development incentive, §15-4-1602.

Small business loan collaboration program, §15-4-2501.

Tourism development, §15-11-503.

Holder.

Conservation easement, §15-20-402.

Housing development.

Development finance authority, §15-5-103.

Housing trust fund, §15-5-1703.**Impaired or impairment.**

County and regional industrial development companies, §15-4-1202.

Improvement plan.

Sparta aquifer critical groundwater counties, §15-22-1203.

DEFINED TERMS —Cont'd**Income.**

Nonprofit incentive act of 2005,
§15-4-3103.

Increased state sales tax liability.

Tourism development, §15-11-503.

Inducements.

Tourism development, §15-11-503.

Industrial enterprise.

Development finance authority,
§15-5-103.

Industry.

Science and technology, §15-3-101.

Infrastructure needs.

Amendment 82 bond financing,
§15-4-3202.

Infrastructure of superproject.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

In-house research.

Consolidated incentive act, §15-4-2703.

Initial capitalization.

Science and technology, §15-3-101.

Intellectual property.

Consolidated incentive act, §15-4-2703.
Inventors' assistance act, §15-4-1402.

Interest rate exchange agreement or similar agreement.

Development finance authority,
§15-5-103.

Intergovernmental agreement.

Development finance authority,
§15-5-207.

Intermodal facility.

Consolidated incentive act, §15-4-2703.

Interstate tributary.

Red river compact, §15-23-501.

Intrastate tributary.

Red river compact, §15-23-501.

Inventor.

Inventors' assistance act, §15-4-1402.

Invested.

Steel manufacturers tax incentives,
§15-4-2401.

Investment.

Amendment 82 bond financing,
§15-4-3202.

Consolidated incentive act, §15-4-2703.
General obligation economic
development superprojects bond
and funding act, §15-4-3003.

Investment fund.

Science and technology, §15-3-101.

Investment threshold.

Consolidated incentive act, §15-4-2703.

Investor group.

Venture capital investment,
§15-5-1403.

DEFINED TERMS —Cont'd**Investors.**

Pooled loan securitization act,
§15-20-801.

Invests.

Consolidated incentive act, §15-4-2703.

Irrigation.

Water pollution abatement facilities
bonds, §15-20-1302.

Job-creating research.

Arkansas research alliance act,
§15-3-303.

Knowledge-based and high-technology jobs.

Arkansas research alliance act,
§15-3-303.

Land application.

Poultry feeding operations
registration, §15-20-903.

Lease.

Consolidated incentive act, §15-4-2703.
Science and technology, §15-3-101.

Letter of commitment.

Amendment 82 bond financing,
§15-4-3202.

Litter.

Poultry feeding operations
registration, §15-20-903.
Soil nutrient application and poultry
litter utilization, §15-20-1103.
Soil nutrient management planners
and applicators certification,
§15-20-1003.

Litter management system.

Poultry feeding operations
registration, §15-20-903.

Livestock.

Soil nutrient application and poultry
litter utilization, §15-20-1103.
Soil nutrient management planners
and applicators certification,
§15-20-1003.

Loan.

Development finance authority,
§15-5-103.
Pooled loan securitization act,
§15-20-801.

Loan limit.

County and regional industrial
development companies,
§15-4-1202.

Local agency.

Rural development program,
§15-6-103.

Local educational agency.

Workforce investment act, §15-4-2203.

Local entity.

Amendment 82 bond financing,
§15-4-3202.

DEFINED TERMS —Cont'd**Local entity —Cont'd**

General obligation economic development superprojects bond and funding act, §15-4-3003.

Water pollution abatement facilities bonds, §15-20-1302.

Local financial institutions.

Small business development, §15-5-703.

Local government.

Water resources cost sharing, §15-22-803.

Local governmental units.

Rural development program, §15-6-103.

Lost reserve account.

Small business capital access, §15-5-1103.

Median household income.

Housing trust fund, §15-5-1703.

Member.

County and regional industrial development companies, §15-4-1202.

Metadata.

Geographic information systems board, §15-21-502.

Minimum streamflow.

Water resources, §15-22-202.

Minority.

Minority business economic development, §15-4-303.

Minority business enterprise.

Minority business economic development, §15-4-303.

Minority business officer.

Minority business economic development, §15-4-303.

Mitigation bank.

Wetlands mitigation bank act, §15-22-1003.

Modernization.

Consolidated incentive act, §15-4-2703.
Enterprise zone, §15-4-1702.

Motorboat.

Eleven point river preservation, §15-23-105.

Municipality.

Public roads improvements tax credit, §15-4-2303.

Rural development program, §15-6-103.

National corporate headquarters.

Consolidated incentive act, §15-4-2703.

Nationally recognized rating agency.

Amendment 82 bond financing, §15-4-3202.

DEFINED TERMS —Cont'd**Nationally recognized rating agency —Cont'd**

General obligation economic development superprojects bond and funding act, §15-4-3003.

Water pollution abatement facilities bonds, §15-20-1302.

Natural area.

Natural area protection, §15-20-501.

Natural deterioration.

Red river compact, §15-23-501.

Natural planning regions.

Regional tourist promotion, §15-11-401.

Natural rivers.

Rivers and creeks, §15-23-303.

Near-equity capital.

Risk capital matching fund, §15-5-1603.

Venture capital investment, §15-5-1403.

Neighborhood organization.

Housing tax credits, §15-5-1302.

Net general revenue.

Amendment 82 bond financing, §15-4-3202.

Net new full-time permanent employee.

Economic development act, §15-4-1902.

Economic development incentive, §15-4-1602.

Enterprise zone, §15-4-1702.

New full-time permanent employee.

Amendment 82 bond financing, §15-4-3202.

Consolidated incentive act, §15-4-2703.

General obligation economic development superprojects bond and funding act, §15-4-3003.

Nonprofit incentive act of 2005, §15-4-3103.

Tourism development, §15-11-503.

New job.

Amendment 82 bond financing, §15-4-3202.

General obligation economic development superprojects bond and funding act, §15-4-3003.

Nonexempt.

Minority business economic development, §15-4-303.

Nonprofit organization.

Nonprofit incentive act of 2005, §15-4-3103.

Nonretail business.

Consolidated incentive act, §15-4-2703.

DEFINED TERMS —Cont'd**Nutrient.**

Soil nutrient application and poultry litter utilization, §15-20-1103.

Soil nutrient management planners and applicators certification, §15-20-1003.

Nutrient application.

Soil nutrient application and poultry litter utilization, §15-20-1103.

Soil nutrient management planners and applicators certification, §15-20-1003.

Nutrient applicator.

Soil nutrient management planners and applicators certification, §15-20-1003.

Nutrient management plan.

Soil nutrient application and poultry litter utilization, §15-20-1103.

Soil nutrient management planners and applicators certification, §15-20-1003.

Nutrient surplus area.

Soil nutrient application and poultry litter utilization, §15-20-1103.

Soil nutrient management planners and applicators certification, §15-20-1003.

Office sector business.

Consolidated incentive act, §15-4-2703.

Economic development act, §15-4-1902.

Economic development incentive, §15-4-1602.

Enterprise zone, §15-4-1702.

Operations.

Development finance authority, §15-5-103.

Operator.

Nuclear power, §15-10-302.

Ordinary high watermark.

Water resources, §15-22-202.

Other job.

Amendment 82 bond financing, §15-4-3202.

Other needs.

Amendment 82 bond financing, §15-4-3202.

Other renewable resources.

Arkansas alternative fuels development act, §15-13-102.

Outstanding bonded indebtedness.

Amendment 82 bond financing, §15-4-3202.

Owner.

Cave protection, §15-20-602.

Construction assistance revolving loan fund, §15-5-909.

DEFINED TERMS —Cont'd**Owner —Cont'd**

Safe drinking water fund, §15-22-1101.

Pastoral rivers.

Rivers and creeks, §15-23-303.

Payroll.

Consolidated incentive act, §15-4-2703.

Nonprofit incentive act of 2005, §15-4-3103.

Payroll factor.

Economic development act, §15-4-1902.

Permanent or perpetual relationship.

Development finance authority, §15-5-207.

Permit action.

Wetlands mitigation bank act, §15-22-1003.

Person.

Capital development companies, §15-4-1002.

Consolidated incentive act, §15-4-2703.

County and regional industrial development companies, §15-4-1202.

Development finance corporation, §15-4-903.

General obligation economic development superprojects bond and funding act, §15-4-3003.

Ground water protection, §15-22-903.

Inventors' assistance act, §15-4-1402.

Pollution control, §15-22-702.

Poultry feeding operations registration, §15-20-903.

Soil nutrient application and poultry litter utilization, §15-20-1103.

Soil nutrient management planners and applicators certification, §15-20-1003.

Sparta aquifer critical groundwater counties, §15-22-1203.

Water pollution abatement facilities bonds, §15-20-1302.

Water resources, §15-22-202.

Water resources development, §15-22-602.

Pledge.

Pooled loan securitization act, §15-20-801.

Pledged fees.

Petroleum storage tank trust fund, §15-5-1203.

Political subdivisions.

Development finance authority, §15-5-103.

Major industry facilities incentive, §15-4-1802.

DEFINED TERMS —Cont'd**Political subdivisions —Cont'd**

Rural development program,
§15-6-103.

Pollution.

Red river compact, §15-23-501.
River basin compact, §15-23-401.

Pollution abatement.

Natural resources, §15-22-702.
Water pollution abatement facilities
bonds, §15-20-1302.

Pool.

Pooled loan securitization act,
§15-20-801.

Port priority improvement program,
§15-23-902.**Postproduction.**

Digital product and motion picture
industry development, §15-4-2003.

Postproduction costs.

Digital product and motion picture
industry development, §15-4-2003.

Poultry.

Poultry feeding operations
registration, §15-20-903.
Soil nutrient application and poultry
litter utilization, §15-20-1103.

Poultry feeding operation.

Poultry feeding operations
registration, §15-20-903.
Soil nutrient application and poultry
litter utilization, §15-20-1103.

Poultry litter.

Alternative energy commission,
§15-10-802.

Poultry litter management plan.

Soil nutrient application and poultry
litter utilization, §15-20-1103.

Poultry processor.

Poultry feeding operations
registration, §15-20-903.

Preconstruction costs.

Consolidated incentive act, §15-4-2703.

Prior act.

Water pollution abatement facilities
bonds, §15-20-1302.

Private sector advisory committee.

Risk capital matching fund,
§15-5-1603.

Prize logs.

Logging, §15-32-408.

Procurement.

Minority business economic
development, §15-4-303.

Product.

Inventors' assistance act, §15-4-1402.

Product development plan.

Inventors' assistance act, §15-4-1402.

DEFINED TERMS —Cont'd**Production.**

Digital product and motion picture
industry development, §15-4-2003.

Production company.

Digital product and motion picture
industry development, §15-4-2003.

Production facilities.

Nuclear power, §15-10-302.

**Production, processing, and testing
equipment.**

Steel manufacturers tax incentives,
§15-4-2401.

Program.

Economic development act, §15-4-1902.

Project.

Consolidated incentive act, §15-4-2703.

Development finance authority bonds,
§15-5-403.

Economic development act, §15-4-1902.

Enterprise zone, §15-4-1702.

Nonprofit incentive act of 2005,
§15-4-3103.

Pollution control, §15-22-702.

Public roads improvements tax credit,
§15-4-2303.

Small business development,
§15-5-703.

Tourism development, §15-11-503.

Water pollution abatement facilities
bonds, §15-20-1302.

Water resources development,
§15-22-602.

Project costs.

Amendment 82 bond financing,
§15-4-3202.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

Pollution control, §15-22-702.

Water pollution abatement facilities
bonds, §15-20-1302.

Water resources development,
§15-22-602.

Project fund.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

Project plan.

Consolidated incentive act, §15-4-2703.

Nonprofit incentive act of 2005,
§15-4-3103.

Property factor.

Economic development act, §15-4-1902.

Proposal.

Inventors' assistance act, §15-4-1402.

Proposed project.

Amendment 82 bond financing,
§15-4-3202.

DEFINED TERMS —Cont'd**Proprietary product.**

Inventors' assistance act, §15-4-1402.

Protective rate.

Soil nutrient application and poultry litter utilization, §15-20-1103.

Public roads.

Public roads improvements tax credit, §15-4-2303.

Qualified Amendment 82 project.

Amendment 82 bond financing, §15-4-3202.

Qualified amusement parks.

Tourism, §15-11-511.

Qualified bonds.

Development finance authority bonds, §15-5-403.

Qualified business.

Consolidated incentive act, §15-4-2703.
Small business capital access, §15-5-1103.

Qualified community development corporation.

Economic development, §15-4-103.

Qualified housing issues.

Private activity bond allocation, §15-5-601.

Qualified investment.

Small business development, §15-5-703.

Qualified loan.

Small business capital access, §15-5-1103.

Qualified manufacturer of steel.

Steel manufacturers tax incentives, §15-4-2401.

Qualified medical company.

Science and technology, §15-3-135.

Qualified production costs.

Digital product and motion picture industry development, §15-4-2003.

Qualified research expenditures.

Consolidated incentive act, §15-4-2703.

Qualified security.

Science and technology, §15-3-101.

Red river.

Natural resources, §15-23-501.

Red river basin.

Natural resources, §15-23-501.

Region.

County and regional industrial development companies, §15-4-1202.

Regional corporate headquarters.

Consolidated incentive act, §15-4-2703.

Regional headquarters.

Economic development act, §15-4-1902.
Enterprise zone, §15-4-1702.

DEFINED TERMS —Cont'd**Regional tourist promotion agency.**

Economic development, §15-11-401.

Regional water district.

Ground water protection, §15-22-903.
Water resources, §15-22-202.

Registered water user.

Sparta aquifer critical groundwater counties, §15-22-1203.

Related entity.

Amendment 82 bond financing, §15-4-3202.

Related person.

General obligation economic development superprojects bond and funding act, §15-4-3003.

Research alliance, §15-3-303.**Research and development programs of the Arkansas science and technology authority.**

Consolidated incentive act, §15-4-2703.

Research area of strategic value.

Consolidated incentive act, §15-4-2703.

Research infrastructure.

Arkansas research alliance act, §15-3-303.

Research university.

Arkansas research alliance act, §15-3-303.

Reserve fund.

Petroleum storage tank trust fund, §15-5-1203.

Reservoir.

Water resources development, §15-22-602.

Resident.

Digital product and motion picture industry development, §15-4-2003.

Revenues.

Sparta aquifer critical groundwater counties, §15-22-1203.

Review committee.

Risk capital matching fund, §15-5-1603.

Revolving fund.

Water resources cost sharing, §15-22-803.

Revolving loan account.

Construction assistance revolving loan fund, §15-5-909.
Safe drinking water fund, §15-22-1101.

River.

Natural resources, §15-23-303.

Royalties.

Inventors' assistance act, §15-4-1402.

Runoff.

Red river compact, §15-23-501.

DEFINED TERMS —Cont'd**Rural area.**

Economic development, §15-6-103.

Rural community.

Economic development, §15-6-103.

Rural development and revitalization.

Economic development, §15-6-103.

Safe drinking water act, §15-22-1101.**Sales factor.**

Economic development act, §15-4-1902.

Scenic rivers.

Rivers and creeks, §15-23-303.

Scientific and technical services business.

Consolidated incentive act, §15-4-2703.

Scientific and technological project.

Science and technology, §15-3-101.

S corporation.

Affordable neighborhood housing tax credits, §15-5-1302.

Secondary purchaser.

Timber trust money, §15-32-601.

Sell.

Pooled loan securitization act, §15-20-801.

Science and technology, §15-3-101.

Set aside account.

Safe drinking water fund, §15-22-1101.

Short-term advance funding.

Development finance authority, §15-5-103.

Significant water user.

Sparta aquifer critical groundwater counties, §15-22-1203.

Sinkhole.

Cave protection, §15-20-602.

Small business.

Economic development, §15-5-703.

Small business development, §15-5-703.

Small business loan collaboration program, §15-4-2501.

Small business concern.

Economic development, §15-4-403.

Small business investment company.

Economic development, §§15-4-403, 15-5-703.

Small business loan committee.

Economic development, §15-5-703.

Small-business person.

Economic development, §15-5-703.

Small business development, §15-5-703.

Small business loan collaboration program, §15-4-2501.

Small business revolving loan fund.

Economic development, §15-5-703.

DEFINED TERMS —Cont'd**Small tree farmer.**

Forestry commission, §15-31-102.

Spatial data.

Geographic information systems board, §15-21-502.

Spatial data repository.

Geographic information systems board, §15-21-502.

Specialized small investment company.

Economic development, §15-5-703.

Special nuclear material.

Nuclear power, §15-10-302.

Speleothem.

Cave protection, §15-20-602.

Sponsor.

Amendment 82 bond financing, §15-4-3202.

General obligation economic development superprojects bond and funding act, §15-4-3003.

Start of construction.

Consolidated incentive act, §15-4-2703.

Nonprofit incentive act of 2005, §15-4-3103.

State.

Development finance authority, §15-5-103.

Safe drinking water fund, §15-22-1101.

State agency.

Arkansas alternative fuels development act, §15-13-102.

Development finance authority, §15-5-103.

Minority business economic development, §15-4-303.

Rural development program, §15-6-103.

State and regional mapping.

Geographic information systems board, §15-21-502.

State apportionment fund.

General obligation economic development superprojects bond and funding act, §15-4-3003.

State average hourly wage.

Amendment 82 bond financing, §15-4-3202.

State ceiling.

Private activity bond allocation, §15-5-601.

State-certified production.

Digital product and motion picture industry development, §15-4-2003.

State chief technology officer.

Geographic information systems board, §15-21-502.

DEFINED TERMS —Cont'd**State contract.**

Minority business economic development, §15-4-303.

State enterprise architecture.

Geographic information systems board, §15-21-502.

State geodetic advisor.

Geographic information systems board, §15-21-502.

State geographic information coordinator.

Geographic information systems board, §15-21-502.

State grants account.

Construction assistance revolving loan fund, §15-5-909.

Safe drinking water fund, §15-22-1101.

State income tax.

Major industry facilities incentive, §15-4-1802.

State investing office.

Water pollution abatement facilities bonds, §15-20-1302.

State land information coordinator.

Geographic information systems board, §15-21-502.

Strategic research.

Consolidated incentive act, §15-4-2703.

Stream.

Natural resources, §15-23-303.

Water resources, §15-22-202.

Superproject.

General obligation economic development superprojects bond and funding act, §15-4-3003.

Supplemental guaranty reserve account.

Development finance authority bonds, §15-5-403.

Supplier.

Biodiesel incentive act, §15-4-2802.

Support infrastructure.

Consolidated incentive act, §15-4-2703.

Sustaining aquifer.

Ground water protection, §15-22-903.

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